Supreme Court, U.S.
FILED
MAY 1 1991
OFFICE OF THE CLERK

No. 90-925

In the Supreme Court of the United States

OCTOBER TERM, 1990

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

JOSEPH PATRICK DOHERTY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: DECEMBER 11, 1990
CERTIORARI GRANTED: FEBRUARY 19, 1991

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 88-4084 and 89-4092

JOSEPH PATRICK DOHERTY, PETITIONER

v.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
6-14-88	Case docketed: Petition for review of an agency order filed.
1-3-89	Stipulation Re: withdrawal of appeal received.
1-10-89	Order withdrawing appeal from active consideration by the Court, such withdrawal to be without prejudice to a reinstatement of the appeal by any party so notifying the clerk in writing by 20 days after Atty General decides certification issue* If not thus reinstated, the appeal shall be deemed withdrawn with prejudice. Withdrawal of the appeal from active consideration shall not operate as a dismissal of under FRAP 42(b), and the automatic stay shall remain in effect. * Any appeal filed herein from the attorney General's decision will be consolidated with this appeal after reinstatement. FILED

* * * * *

DATE	FILINGS—PROCEEDINGS
7/11/89	Appellant JOSEPH PATRICK DOHERTY Notice of Re-Instatement Pursuant to the Order of January 10, 1989, *FILED.* (88-4084).
	* * * * *
7/20/89	Case Docketed Petition for Review of a Decision Issued by the U.S. Attorney General on Behalf of the Petitioner JOSEPH PATRICK DOHERTY, *FILED.* (89-4092).
	* * * * *
8-14-89	Record on appeal filed. (original papers of the INS COURT)
	* * * * *
8-25-89	Order granting Appellant JOSEPH DOHERTY'S motion for an extension of time to file principal brief in cases consolidated on appeal; up to and not exceeding October 27, 1989, FILED. (leave to file appellant brief of 100 pages)
09-01-89	Scheduling order #10 FILED (Petitioner's Brief and joint appendix shall be filed on or before October 27, 1989; the respondent's brief shall be filed on or before November 22, 1989 and the argument of the appeal shall be heard as early as the week of December 11, 1989)
	* * * * *
10-27-89	Petitioner JOSEPH DOHERTY—brief filed. (100 pages)
	* * * * *
11-2-89	Amicus Curiae AMERICAN IMMIGRATIONS LAWYERS ASSOC.—amicus curiae brief filed.
	* * * * *
11-6-89	Amicus Curiae MEMBERS OF CONGRESS—amicus brief filed.

DATE	FILINGS—PROCEEDINGS
11-17-89	Order granting Respondent U.S. DEPT OF JUSTICE's motion for extension of time to file respondent's brief in cases consolidated on appeal; respondents brief be filed on or before Dec. 22, 1989, filed.
	* * * * *
12/13/89	Order GRANTED Petitioner DOHERTY motion for extension of time to file reply brief until Jan. 12, 1990 FILED.
12/22/89	Respondent US DEPT. OF JUSTICE brief filed
	* * * * *
12/28/89	Order granted respondent US DEPT OF JUSTICE motion for leave to supplement the record filed.
1-12-90	Petitioner DOHERTY reply brief filed
	* * * * *
1-18-90	Order that in the event that petitioner files a petition for certiorari within the time fram[e] d[e]-cribed in ¶ 1, re[s]pondent shall stay execution of the order of deportation pending a final disposition by the Supreme Court of that petition filed
1-19-90	Case heard before LUMBARD, FEINBERG, PRATT, C.JJ.
	* * * * *
6/29/90	GRANTED IN PART DENIED IN PART, AND REMANDED BY PUBLISHED SIGNED OPINION PER JUDGE PRATT
6/29/90	CONCUR AND DISSENT IN BY PUBLISHED SIGNED OPINION PER JUDGE LUMBARD
6/29/90	JUDGMENT FILED
	* * * * *
8-8-90	Order granting Respondent US DEPT OF JUSTICE motion for additional time to file petition for rehearing with suggestion of rehearing en banc. Filed.

DATE	FILINGS—PROCEEDINGS
8-8-90	Respondent US DEPT OF JUSTICE petition for rehearing with suggestion rehearing en banc Filed
9-13-90	Order DENYING Respondent US DEPT. OF JUSTICE petition for rehearing with suggestion of rehearing en banc Filed
	* * * * *
10-17-90	Mandate (opinion judgment) issued to INS
12-17-90	NOTICE OF FILING petition for writ of certiorari by INS petitioner, dated DEC. 11, 1990, Supreme Ct. #90-925 Filed
2-22-91	CERTIFIED COPY OF ORDER granting petition for writ of certiorari by INS petitioner, dated Feb. 19, 1991, Supreme Ct. #90-925. Filed

EDITOR'S NOTE

PAGES 5 thru 11 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORDER TO SHOW CAUSE, NOTICE OF HEARING AND WARRANT FOR ARREST OF ALIEN

(issued June 18, 1983, to commence deportation proceedings)

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS, THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so desire, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witness considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charge set forth therein. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that, pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative process, or from the date of the final order of the court, if judicial review is had, you shall be:

☐ Detained in the custody of this Service. ☐ Released on recognizance.

☒ Released under bond in the amount of $ No bond.

You may request that an Immigration Judge redetermine this decision.

☐ I do ☐ do not request a redetermination by an Immigration Judge of the custody decision.

Rafael Ruiz — June 17, 1983

(signature of respondent) (date)

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

Rafael Ruiz — June 17, 1983

(signature of respondent) (date)

CERTIFICATE OF SERVICE

Served by me at 26 Federal Plaza NYC on June 17 1983 at 10:00 a.m.

(signature and title of employee or officer)

REQUEST FOR ASYLUM IN THE UNITED STATES

(filed by respondent in deportation proceedings
on June 27, 1983)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service — No. ———

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A26 185 231

In the Matter of DOHERTY, Joseph Patrick Thomas Respondent.
AKA REILLY, Joseph

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Northern Ireland and a citizen of United Kingdom & Colonies;
3. You entered the United States at an unknown port on or about an unknown date.
(date)

4. You have failed to establish the date, place, and manner of entry into the United States.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you are in the United States in violation of this Act or in violation of any other law of the United States, and Section 291 of the Act in that you have failed to show the time, place and manner of your entry into the United States.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at ———

on ——— at ——— m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: June 17, 1983

(signature and title of issuing officer)

ASSISTANT DISTRICT DIRECTOR FOR INVESTIGATIONS

(City and State)

APPEAR WITH PASSPORT AND IMMIGRATION DOCUMENTS

Form I-221 (Rev. 8-1-77) Y

(over)

6

(Family name)	(First name)	(Middle name)	☒ MALE ☐ FEMALE	BIRTHDATE (Mo.-Day-Yr.)	NATIONALITY	FILE NUMBER
DOHERTY,	JOSEPH	PATRICK		1/20/55	Irish	A26-185-231

ALL OTHER NAMES USED (Including names by previous marriages)	CITY AND COUNTRY OF BIRTH	SOCIAL SECURITY NO. (If any)
JOSEPH REILLY	Belfast Ireland	

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)	CITY AND COUNTRY OF RESIDENCE
FATHER	DOHERTY,	JOSEPH	Belfast Ireland	Belfast Ireland
MOTHER (Maiden name)	DARRAGH,	MAUREEN	" "	" "

HUSBAND (If none, so state) OR WIFE	FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
NONE						

FORMER HUSBANDS OR WIVES (If none, so state)

FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
NONE				

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
30 Davis Avenue	Kearney	New Jersey	USA	May	83	PRESENT TIME	
7214 13th Ave., B'klyn	New York	New York	USA	Feb.	82	May	83

APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
155 Seamount Street	Belfast	Co. Antrim	Ireland	Dec.	79	June	81

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE) LIST PRESENT EMPLOYMENT FIRST

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (Specify)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
Via Mason Tenders Local #59-HRH	Mason Tender	Feb.	82	PRESENT TIME	
Construction Co., 270 Park Avenue, NYC					
MOFFET CONSTRUCTION CO., New Jersey					
Clancy's Bar, 55th St. & 3rd Ave., NYC - (weekends)	Bartender	March	83	Present	
Show below last occupation abroad if not shown above. (Include all information requested above.)					
Plumbers Apprentice			'69		'72

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:
☐ NATURALIZATION ☐ STATUS AS PERMANENT RESIDENT
☒ OTHER (SPECIFY) Asylum

Are all copies legible? ☐ Yes

SIGNATURE OF APPLICANT: Joe. P Doherty DATE: 6.27.83

IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS, WRITE YOUR NAME IN YOUR NATIVE ALPHABET IN THIS SPACE.

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
DOHERTY	JOSEPH	PATRICK	NONE

Immigration and Naturalization Service

Form Approved
OMB No. 1115-00

REQUEST FOR ASYLUM IN THE UNITED STATES

INS Office

Date

1. Family Name	First	Middle Name	2. A number (if any or known)
DOHERTY	JOSEPH	PATRICK	A-26 185 231

All other names used (Include maiden name if married)

Reilly, Joseph

3. Sex	4. Marital status
☒ Male ☐ Female	☒ Single ☐ Married ☐ Divorced ☐ Widowed

5. I was born: (Month) (Day) (Year) in (Town or City) (State or Province) (Country)

January 20, 1955 Belfast County Antrim Ireland

6. Nationality — at birth	At present	Other nationalities
Irish	Irish	None

7. If stateless, how did you become stateless?

N/A

8. Ethnic group	Religion	9. Languages spoken
	Roman Catholic	Gaelic and English

10. Address in United States (In care of, if appropriate)
Number and street Apt. No.) City or town) State) Zip Code)

30 Davis Avenue Kearney, New Jersey

Telephone number (Include area code)
(201)997-9237

11. Address abroad prior to coming to the United States
Number and street) (City) (Province) (Country)

155 Spamount Street Belfast County Antrim Ireland

12. My last arrival in the U.S. occurred on: (Mo/Day/Yr)

February 2, 1982

As a ☒ Visitor ☐ Student ☐ Stowaway ☐ Crewman ☐ Other (Specify)

13. At the port of (U.S. State)

New York, New York

Means of arrival (Name of vessel or airline and flight number, etc.)

Aer Lingus-Flight No. Unknown

I ☒ was ☐ was not inspected

Date authorized stay expires (Mo/Day/Yr)

I. None authorized

14. My immigration visa number is No visa and it was issued by the U.S. Consul on Mo/Day/Yr

at (City) (Country)

15. Name and address of each school attended	Type of school	From Mo/Yr	To Mo/Yr	Highest grade completed	Date of degree or certificate
Star of the Sea, Belfast	Primary	1958	1962	N/A	N/A
St. Malachy, Belfast	2nd Primary	1962	1965	N/A	N/A
St. Patrick, Belfast	Secondary	1965	1969	N/A	C.S.E. 4

16. What special skills do you have?

I was a plumbers apprentice for two and one half years. I did not complete the program because I was interred without trial in 1972

16a. Social Security No. (if any)

076-50-0652

17. Name of husband or wife (If wife's maiden name)

None

18. My husband or wife ☐ will ☐ will not (If will not, explain why)

N/A

Address (Apt. No.) (No. and street) (Town or city) Province or state) (Country)

(OVER)

RECEIVED	ISSUED IN	BENEFICIARY OF
		01335

19. If no, the U.S. is your spouse included in your request for asylum? ☐ Yes ☐ No (If not, explain why)

N/A

20. If no, the U.S. is spouse making a parole application for asylum? ☐ Yes ☐ No (If not, explain why)

N/A

21. If no, the U.S. are children included in your request for asylum? ☐ Yes ☐ No (If not, explain why)

N/A

22. I have ——— sons or daughters as follows: (Complete all columns as to each son or daughter. If living with you state "with me" in last column; otherwise give city and state or foreign country of son's or daughter's residence):

Name	Sex	Place of birth	Date of birth	Now living at
None				
None				
None				
None				
None				

Relatives in U.S. (other than immediate family)

Name	Address	Relationship	Immigration status
None			

Other close relatives who are relatives but outside the U.S.

Name	Relationship	Country where presently located
None		

List all travel or identity documents such as national passport, refugee travel document or national identity card

Document type	Document number	Issuing country or authority	Date of issue	Date of expiration	Cost	Obtained by (name)
None						

23. Why did you obtain a U.S. visa?

N/A

24. If you did not apply for a U.S. visa, explain why not: Because of my political beliefs and activities and my conviction in Northern Ireland for political crimes, I believe I would not be granted such a visa.

25. Date of departure from your country of nationality (Mo/Day/Yr)

2/1/82

26. Are you afraid to return to your country? ☐ Yes ☒ No (If not, explain why)

... or Passport ☐ Yes ☐ No Travel documents ☐ Yes ... or other documents ☐ Yes ☐ No

... why)

No Passport issued
United Kingdom is seeking my extradition from the United States.

... What do you think would happen to you if you returned? (Explain)

See EXHIBIT "A" Attached

... Where was it your home country, to what country did you intend to go?

U.S.A.

... Would you return to your home country? ☐ Yes ☐ No (Explain)

See EXHIBIT "A" Attached

... Have you or any member of your immediate family ever belonged to any organization in your home country? ☒ Yes ☐ No (If yes, provide the following information relative to each organization: Name of organization, dates of membership or affiliation, purpose of the organization, what, if any, were your official duties or responsibilities and are you still an active member (If not, explain)

The Civil Rights movement, Sinn Fein (Political Party) Wa Fianna Eiredan (Republican Scounts), Irish Republican Army - See EXHIBIT "B" Attached.

... that you believe will result in persecution in your home country ☐ Yes ☐ No (If yes, explain)

See EXHIBIT "C" Attached

... Have you been: Sued ☐ detained ☐ interrogated ☐ arrested and released ☐ arrested and convicted ☐ imprisoned in any country ☐ Yes ☐ No (If yes, explain the circumstances and the reasons for the actions taken against you, dates involved, duration of the detention or imprisonment, reasons for the detention or conviction, and the final outcome. Also indicate the names and addresses of persons who can verify these statements. Attach documents relating to these incidents, if any)

See EXHIBIT "D" Attached

... If you have already been given asylum or current conditions in your country are such that you fear that you will be granted asylum, explain) ☒ No (If yes, explain)

Because of my active participation as an opponent of British rule in the northern counties of Ireland I have been subjected to special scrutiny and persecution by the British Government since 1972.

... Have you or any member of your immediate family ever been involved in the mistreatment of other persons because of their race ☐ Race ☐ Religion ☐ Nationality ☒ Political opinion or ☒ Membership in a particular social group? (Specify the circumstances involved and the relationship of the family member to you and what role he or she played in the mistreatment. Indicate the date, exact location, what you think will be done to you and why you fear persecution if returned to your home country, whether these actions and what could result from these statements. Attach documents relating to these incidents)

See EXHIBIT "E" Attached

... After leaving your home country, have you traveled through (other than in transit) or resided in any other country before entering the U.S.? ☐ Yes ☒ No (If yes, list each country, length of stay, purpose of stay, address, and reason for leaving, and whether you are entitled to return to that country for residence purposes)

... Why do you fear returning to the U.S.? I believe I could escape the persecution and violence with which I have had to live during my entire life under British rule in the Northern Counties of Ireland. I came here to live a life of peace and without danger to my life.

... Have you ever been in the U.S. in any other status? ☐ Yes ☐ No (If yes, specify the last time you came to the U.S., the status you had at that time, and what you did to change, extend, or adjust your status)

42. Have you been recognized as a refugee by another country or by the United Nations High Commissioner for Refugees? ☐ Yes ☒ No (If yes, where and when)

43. Are you registered with a consulate or any other authority of your home country abroad? ☐ Yes—Give details ☒ No—Explain why not

44. Is there any additional information not covered by the above questions? (If yes, explain)

I (your name) declare that the above and all accompanying documents are true and correct to the best of my knowledge and belief

Joe P. Dobalian — 6. 27. 83.

(Signature of Applicant) (Date)

(Interviewing Officer) (Date of Interview)

ACTION BY ADJUDICATING OFFICER

☐ GRANTED ☐ DENIED

(Adjudicating Officer) (Date)

Advisory opinion requested ☐

(Date)

EXHIBIT "A"

31. I would be arrested because of my political and religious activities and beliefs. I would be incarcerated for the rest of my life on the basis of a conviction that was obtained against me in a British Court. Said courts are established to try only individuals engaged in political activities in opposition to British rule in the Northern Counties of Ireland. These courts conduct trials without juries and without other normally recognized procedural safeguards.

Once incarcerated my life would be in danger.

EXHIBIT "B"

34. I myself have been a member of the early civil rights movement in 1969. I joined because I did not have any civil rights as an Irish Catholic. Peaceful meetings were broken up by both uniformed British soldiers and soldiers who were out of uniform. People attending these meetings were beaten and shot. In 1971 I became a member of the Fianna Eirerdam, the Republican Scout movement. I was interned without trial in January 1972. Upon my release from prison camp I joined the Irish Republican Army in June 1972.

EXHIBIT "C"

35. I have been an active opponent of British rule in the Northern Counties of Ireland since 1972. I have taken part in peaceful demonstrations against British rule and I have participated in political activities directed towards terminating British rule. I have publicly evidenced my opposition to British rule and as a result have been subjected to political and religious persecution.

EXHIBIT "D"

36. I was arrested on January 1972. I was held for three days and stripped naked, tortured, beaten, and allowed no sleep. I was then interned in a prison camp (Long Kesh) in Belfast. I had no trial, no lawyer, and no charges were lodged against me. I was held on just a piece of paper saying I had been ordered interned without trial. Upon being released on June 1972, I was again arrested and held for questioning for three days for no reason. This sort of harassment continued again and again. The subject of the interrogation was always my political views. Each period of interrogation ended with a warning not to engage in any political activity. I was often slapped and beaten during questioning.

In February 1973 I was arrested and convicted of possession of a starting pistol. I was sentenced to 18 months in Long Kesh prison camp. I was tortured and beaten while in prison. I was released in December of 1973. After my release I was constantly being arrested and interrogated for no reason. Again I joined the Irish Republican Army.

In May 1974 I was arrested for possession of explosives. I was sentenced to 12 years. After serving 6 years, I was released. I joined the Irish Republic Army. In May of 1980, as a part of the civil war in the Northern Counties of Ireland, there was a gun battle with out of uniformed British soldiers. The soldiers, members of the clandestine unit known as the SAS, surrounded a house in which I was present. Without announcing their presence or purpose they opened fire on the house and its occupants. During the battle a British soldier was killed. Along with three others I was arrested and convicted of the murder of the British soldier and other related crimes. I spent thirteen months in prison prior to trial. Before the trial was concluded I escaped from prison. I was convicted and sentenced in absentia to life imprisonment.

As a juvenile, in 1969, I was convicted of housebreaking and shopbreaking. I was sentenced to three and one half weeks in a home for juveniles.

In 1974 I was convicted of an attempt to escape from the Crumlin Road Prison in Belfast.

EXHIBIT "E"

38. Because of my religion I was denied basic human rights. I could not obtain a job, or decent housing. I could not vote. I was constantly subjected to arbitrary arrest, detention and interrogation. Because of my membership with the civil rights movement and the Sinn Fein Party, a legal political group that participated successfully in recent elections, my sister Ann Doherty was arrested and interned in 1973 with no trial.

My father and mother and three other sisters, Maureen, Sharon, and Pat were arrested at various times during the last 12 years, both because of my political activities and their own political beliefs. In 1974 the home of my family was bombed and destroyed by a quasi-official Protestant group.

Details and documentation will be furnished as they become available.

ADDITIONAL CHARGES OF DEPORTABILITY
(filed in deportation proceedings on February 25, 1985)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No. A26 185 231

UNITED STATES OF AMERICA:

IN THE MATTER OF DOHERTY, JOSEPH PATRICK THOMAS
AKA REILLY, JOSEPH, RESPONDENT.

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

ADDITIONAL CHARGES
OF DEPORTABILITY

To: Doherty, Joseph Patrick Thomas
c/o Somerstein and Pike, Esqs.
170 Broadway, Suite 808
New York NY 10038

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act ("The Act") (8 USC 1251), in that, at the time of entry you were within one or more of the classes of

aliens excludable by the law existing at the time of entry, to wit, aliens who have procured a visa or other documentation, by fraud, or by willfully misrepresenting a material fact. Section 212 (a) (19) of the Act. (8 USC 1182 (a) (19).

Section 241(a)(1) of the Act, in that, at the time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of entry, to wit, aliens who are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said Act, or regulations made thereunder, Section 212(a) (20) of the Act. (8 USC 1182(a) (20).

Section 241(a)(1) of the Act, in that, at the time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of entry, to wit, aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime. Section 212 (a) (9) of the Act. (8 USC 1182 (a) (9).

Section 241(a)(1) of the Act, in that, at the time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of entry, to wit, aliens who have been convicted of two or more offenses (other than purely political offenses) regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were five years or more. Section 212 (a) (10) of the Act. (8 USC 1182 (a) (10).

Section 241(a)(1) of the Act, in that, at the time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of entry, to wit, aliens seeking to enter the United States

solely, principally or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States. Section 212 a) (27) of the Act. (8 USC 1182(a) (27).

Section 241(a) of the Act, in that, at the time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of entry, to wit, aliens who are, or at any time have been, members of any of the following classes: aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or [propriety] of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; under Section 212 (a) (28) (F) of the Act. (8 USC 1152 (28) (F).

In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

5. Allegation # 3 is deleted and in place and instead—You entered the United States at New York, New York in or about February, 1982.

6. At that place and time of entry you presented in connection with your application for admission to the United States, a passport of the Republic of Ireland issued in the name of Henry J. O'Reilly containing a United States of America non-immigrant visa.

7. At that place and time of entry you willfully misrepresented yourself to be one Henry J. O'Reilly.

8. In truth and in fact you are not one Henry J. O'Reilly but one Joseph Patrick Thomas Doherty.

9. It was then your intention to remain indefinitely in the United States.

10. You were not in possession of a valid immigrant visa or other entry document for permanent residence.

11. You were on June 12, 1981, convicted in Belfast Crown Criminal Court of murder, attempted murder and possession of firearms and ammunition to wit, an M60 machine gun, 7.62 Heckler and Koch rifle, and other weapons.

12. You were on May 16, 1973 convicted in the Belfast Custody Court of Possession of Firearms in Suspicious Circumstances and sentenced to one year imprisonment.

13. You were on September 4, 1974 convicted in the Belfast City Court of Possession of Explosive Substances and sentenced to ten years imprisonment.

14. You were on February 13, 1975 convicted in the Belfast City Court of Prison Breaking with Intent to Escape and sentenced to eighteen months imprisonment.

15. You have been affiliated with the Provisional Irish Republican Army ("PIRA") since 1970.

16. The PIRA is a clandestine terrorist organization involved in attacks on both government civilian institutions and military installations, random violence against innocent civilian populations through indiscriminate bombing campaigns, the murder or maiming of targeted individuals for political reason based on their public opposition to the PIRA, and the use of violence to maintain order and discipline within the PIRA's membership. Its operations have been funded, in part, through the commission of thousands of armed robberies.

February 25, 1985

/s/ Lloyd Sherman
Trial Attorney

TRANSCRIPT OF HEARING IN DEPORTATION PROCEEDINGS
(September 12, 1986)

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[27] JUDGE FOR THE RECORD

This is a continued deportation hearing in the case Joseph Patrick Thomas Doherty; A 26 185 231; in the English language; The law firm of Somerstein and Pike; 170 Broadway; New York, New York 10038 is still representing the alien. We have of Counsel, Arthur Helton, Esquire of Counsel to Somerstein and Pike. All three are present today which is September 12th 1986 at Varick Street. Mr. Helton's address is . .

JUDGE TO MR. HELTON

Q. What sir? Could you just tell it for the record, please?

A. The Lawyer's Committee for Human Rights and it's 36 W. 44th Street, Suite 914, New York, New York 10036.

MR. SOMERSTEIN TO JUDGE

Q. Your Honor, would the record please note the new address for Somerstein and make it 401 Broadway?

A. Sure. So noted.

JUDGE FOR THE RECORD

And, not to be outnumbered, Scott Blackman, Esquire, who is acting trial attorney for the Service at New York 10278 has as co-counsel Allen Page, Esquire, a trial attorney for the Service at New York City. Let the record show that in the absence of the Government attorneys, because Mr. Helton was new to the proceedings, the record of February 25th, 1985 and argument on adjournments of March 19th, 1985 [28] were played back for all to hear, but, there was no Government attorney present.

JUDGE TO MR. BLACKMAN

Q. Now, Mr. Blackman, you were asked whether you wish to hear those recordings and you indicated that you were satisfied to proceed, that your memory was adequate. Correct?

A. That is correct, Your Honor. I declined to listen to the record.

JUDGE TO MR. PAGE

Q. And, Mr. Page, are you interested in listening to the record or could we proceed?

A. Ah, you can proceed, Judge.

JUDGE FOR THE RECORD

Ah, there was some difficulty of playing back the recording of February 25th, 1985 but with the help of our court clerk we were able to succeed in listing.

JUDGE TO MS. PIKE

Q. Correct, Ms. Pike?

A. That is correct, Your Honor.

JUDGE TO MR. HELTON

Q. Mr. Helton?

A. Yes, that's correct.

JUDGE TO MR. SOMERSTEIN

Q. Mr. Somerstein?

A. Yes, Your Honor.

[29] JUDGE FOR THE RECORD

And, the only thing that was accomplished was to recess after the alien, who was sworn, testified that he was not a citizen of the United States. He was born in Belfast, but questioned whether Belfast was part of the United Kingdom and Colonies. That's as far as we went with respect to the pleadings. Subsequently, on March 19, 1985 there was much discussion concerning the extra-

dition proceedings that were pending before the courts and the fact that one judge refused to grant extradition, the Service initiated a mandamus proceeding which had not been completed and the case was adjourned and under the matter of Perez and Jimenez so that the Board decision could be complied with and we adjourned the case until that proceeding was ended. Mr. Blackman, Ms. Pike and Mr. Somerstein have been in constant contact with me; there's no need to go over those dates; we have them, if necessary, wherein there was mutual agreement to continue the case until the extradition and/or mandamus actions were completed. Then Mr. Blackman advised that they were completed and he agreed that we would have a conference and Ms. Pike and Mr. Somerstein and Mr. Blackman were present before me last Friday, which . . or was it Monday . .

MR. SOMERSTEIN TO JUDGE

Our first appearance was last Friday . .

MS. PIKE TO JUDGE

September 3rd.

[30] JUDGE

September 3rd.

MR. SOMERSTEIN TO JUDGE

Q. And, then there was another appearance . .

A. No, it was Friday, the 5th . .

MS. PIKE TO JUDGE

Oh, I'm sorry. That's right.

JUDGE FOR THE RECORD

Friday, September 5th; then, Monday, September 8th and Mr. Blackman indicated that he wasn't ready on September 8th and he wished an adjournment until the 15th of September and Mr. Somerstein indicated that he couldn't be present, he had a previous commitment and

Mr. Blackman graciously stated that all right we can make it for the 12th and we're all here on the 12th; the only additions that we have the fact that Mr. Helton is added to the staff of the alien's representation and Mr. Page is added to the Government's representation. At this point, considering what took place before, the question is whether the alien could plead to the Order to Show Cause, designate the Republic of Ireland, also known as Eire, as the country of deportation and Ms. Pike indicated that Eire is willing to accept him and that would more or less end the case. Mr. Blackman said that because of the language in 243(a) where he acknowledged that the alien had the right to choose a country of deportation but that the Attorney General could refuse to accept such designation if [31] it's in the best interest of this country not to, said that he needed the time so that judgement could be made; and, he advised me this morning that in the presence of all counsel that the Government is still not ready, that the counsel to the Secretary of State wishes to consult with the Attorney General and Mr. Meiss (phonetic spelling) [Meese] is going to be presented with the problem the week of the 15th of September.

JUDGE TO MR. BLACKMAN

Q. Is that correct, Mr. Blackman?
A. That's correct, Your Honor.

JUDGE FOR THE RECORD

And, Ms. Pike indicated that she's felt that the adjournments have reached the end of the line as far as she is concerned, that the Government was the one who always wanted him to be deported and why all of a sudden the switch.

JUDGE TO MS. PIKE

Q. Correct, Ms. Pike?
A. That's quite correct, Your Honor.

JUDGE FOR THE RECORD

Now, Mr. Helton didn't say anything off the record.

JUDGE TO MR. HELTON

Q. Did you want to say anything on the record?
A. Nothing at this time.
Q. Okay.

JUDGE FOR THE RECORD

We can proceed, then, with the point where we left [32] off on February 25th, with respect to the pleadings.

MS. PIKE TO JUDGE

Q. Your Honor, may I interrupt just briefly?
A. Sure.
Q. In the sake of keeping the record precise, Your Honor's remarks were accurate except you did make reference to a mandamus proceeding.
A. Right.
Q. There was no mandamus proceeding. There was a proceeding subsequent to the extradition proceeding initiated by the Government of the United States in the United States District Court for the Southern District of New York. That eventually was resolved adversely to the Government, but, it was not a mandamus proceeding.
A. I stand corrected. Thank you.

JUDGE FOR THE RECORD

With respect to the pleadings, the alien is not present. Ms. Pike indicated that she waives the presence of the alien.

JUDGE TO MS. PIKE

Q. Correct, Ms. Pike?
A. That is correct.

JUDGE TO MR. BLACKMAN

Q. Is there any reason why, Mr. Blackman, the alien has to be present?

A. At this point and time, Your Honor, no.

[33] Q. Very well.

JUDGE FOR THE RECORD

Let's return, then, to Exhibit 1. Allegation one has been conceded. Allegation two was a problem because he stated that he was born in Belfast; he wouldn't acknowledge that that was part of Northern Ireland and refused to state that he was a citizen of the United Kingdom and Colonies; in fact, for the record, Mr. Doherty stated that he was a citizen of Ireland, and, I indicated to Mr. Sherman who was then representing the Service that the Service would have the burden of establishing that he is a citizen of the United Kingdom and Colonies.

JUDGE TO MR. BLACKMAN

Q. Do you have that evidence, Mr. Blackman?

A. I do.

Q. Do you want to offer that?

A. I have the birth certificate of one Joseph Patrick Doherty showing birth in Belfast on January 20th, 1955.

MS. PIKE TO JUDGE

Q. We have examined it, Your Honor.

A. I beg your pardon.

Q. We have examined it.

A. Any objection if it were received as Exhibit 2?

Q. No, Your Honor.

MR. BLACKMAN TO JUDGE

[34] Q. I'll provide copies to Counsel at a later time.

A. Okay. Sure.

Q. You want to do it now? Sure.

A. Okay. Exhibit 3.

Q. Your Honor, I also have an opinion that was solicited from the Library of Congress concerning the citizenship of a person born in Belfast Northern Ireland. That opinion states that such a person is indeed a citizen of the United Kingdom.

JUDGE FOR THE RECORD

This will be marked Exhibit 4 for identification purposes.

JUDGE TO MS. PIKE

Q. And, Ms. Pike, if you want to look at that.

A. I we may, Your Honor.

Q. Any objection to if Exhibit 4 for identification were received as Exhibit 4, Ms. Pike?

A. None, Your Honor.

JUDGE FOR THE RECORD

Exhibit 4.

JUDGE TO MS. PIKE

Q. You concede, then, the accuracy of allegation number 2 on the Order to Show Cause, Exhibit 1, Ms. Pike?

A. I certainly concede that he is recognized to be a citizen of the United Kingdom and Colonies, yes, Your Honor.

[35] Q. Very well. Allegation three has been amended for or actually deleted by allegation five. Let's turn to allegation five and it says that "the alien entered the United States at New York, New York on or about February, 1982. Is that true, conceded? We have to look at Exhibit two now; now we're moving on to Exhibit two, allegation five.

A. That is correct, Your Honor.

Q. And, allegation six, at that place and time of entry the alien presented in connection with his applica-

tion for admission a passport of the Republic of Ireland issued in the name of Henry J. Riley containing a United States of America non-immigrant visa. Is that true?

A. That is correct, Your Honor.

Q. Allegation seven . . let me just note this, hold on . . allegation seven, at that time and place of entry Mr. Doherty willfully misrepresented himself to be one Henry J. O'Riley?

A. That is correct, Your Honor.

Q. Allegation eight, in truth and fact, Mr. Doherty was not one Henry J. O'Riley, but Joseph Patrick Thomas Doherty. Is that true?

A. That is correct, Your Honor.

Q. Allegation nine, it was then Mr. Doherty's intention to remain indefinitely in the United States?

A. That is correct.

Q. Allegation ten, Mr. Doherty was not in [36] possession of a valid immigrant visa or other entry document for permanent residence?

A. That is correct, Your Honor.

Q. Allegation eleven, on June 12th, 1981 Mr. Doherty was convicted in Belfast Crown criminal court of murder, attempted murder and possession of firearms and ammunition towith an M-60 machine, 7.62 Heckler and Kotch (phonetic spelling) and other weapons?

A. Your Honor, I am not prepared to consent to the truth of that allegation today. I would suggest, Your Honor, that, based on the previous admissions, Mr. Doherty's deportability has been established and indeed we concede to this deportability, as we have represented to Your Honor earlier.

Q. In other words, you concede his deportability under Sections 212(a) (19[)] and . . let's see, did they charge him with 19? Well, he certainly, clearly is deportable, based on the fact that he didn't have any entry document. .

MR. BLACKMAN TO JUDGE

Q. Your Honor, the Government would like to proceed in all the allegations and charges.

A. All right. Fine. I have no objections to that. In other words, you're willing to prove allegation number-eleven?

Q. No, I would submit to allegation number eleven as a matter of record in connection with proceeding entitled [37] in the matter of the requested extradition of Joseph Patrick Thomas Doherty by the government of the United Kingdom of Great Britian and Northern Ireland.

A. Well, if the alien is willing to concede deportability, is there any reason why we have to pursue the other allegations?

Q. I think that the basis for his deportability can be a very significant issue. You know, I don't think that we are dealing, Your Honor, with a run of the mill case here, Your Honor. This whole case and the facts and circumstances surrounding it are somewhat unique, as I explained to you earlier, Your Honor, off the record. This is a matter of some concern, not only to the Government of the United States at the highest levels but at to other governments of the world as well.

JUDGE TO MS. PIKE

Q. Let me ask you this. Ms. Pike, are you going to apply for any discretionary relief from deportation?

A. No, Your Honor, we're conceding deportability.

Q. No, no, no. Listen to me. Before I ask the Government to proceed, the question is this, based on what was discussed earlier in the February 25th hearing, the initial hearing with Mr. Doherty being present, you raised the issue of political asylum and. .

A. I'm sorry, Your Honor, yes. .

[38] Q. And, you indicated at that time that you wanted the application to be submitted to the Departmen of State for a further response; so, my question is

this, you say he's deportable and clearly, based on the allegations that you've conceded up to this point, he is clearly deportable under Section 212(a)(20) at the very least. In other words, 241(a)(1), based on the fact that he didn't have the proper documents for which to enter under 212(a)(20). The question is, are you now saying that you no longer wish to apply for asylum and you waiving his right to apply for asylum?

A. That is correct, Your Honor. We would, at this time, withdraw the application for political asylum. The only thing that we would request would, of course, be the opportunity to designate a country.

JUDGE TO MR. BLACKMAN

Q. Uh, huh. Under the circumstances, Mr. Blackman. .

JUDGE TO MS. PIKE

Q. But, just before I address Mr. Blackman again I just want to be sure . . there won't be any application for political asylum and/or withholding of deportation, correct?

A. That is correct.

Q. No application for voluntary departure?

A. That is correct.

Q. In other words, there is no application for relief from deportation that you will be making?

[39] A. That is correct.

JUDGE TO MR. BLACKMAN

Q. Under the circumstances, Mr. Blackman, I think it's a waste of the court's time to take the remainder of the pleadings since she's already conceded he is deportable from the United States and is willing to designate a country of deportation. What difference does it make if she is not going to apply for any discretionary relief?

JUDGE FOR THE RECORD

Let the record show that co-counsel is discussing this issue with Mr. Blackman, that's why he's not responding.

JUDGE FOR THE RECORD

Oh, by the way, I just did notice that the Service is charging him with being deportable under 212(a)(19) as well . . 241(a)(1) as being excludable under 212(a)(19) . . so you can easily find deportability. .

MR. BLACKMAN TO JUDGE

Q. Can we go off the record?

A. Yeh.

JUDGE FOR THE RECORD

. . and, I do so find under both sections, okay.

MR. BLACKMAN TO JUDGE

Q. Can we go off the record, sir?

JUDGE FOR THE RECORD

Go off the record for a moment. All right, let the record show that after an extensive recess of four minutes [40] Mr. Blackman and Mr. Page have returned and. .

JUDGE TO MR. BLACKMAN

Q. Mr. Blackman, you have a comment?

A. Yes, Your Honor, the Government wishes to go forward on allegations and charges contained in the Order to Show Cause. We believe that we should have the opportunity to prove those allegations and charges.

Q. I just don't feel it's necessary and we'll proceed at that point since the alien has already conceded, through his counsel, that he is deportable under Section 241(a)(1) as being inadmissable under Sections 212(a)(19) and 212(a)(20); that the man was seeking admission by fraud and without proper documents.

JUDGE TO MS. PIKE

Q. And, under the circumstances, you concede his deportability, Ms. Pike?

A. Yes, that is correct, Your Honor.

JUDGE FOR THE RECORD

Deportability conceded; designation of country is . .

MS. PIKE TO JUDGE

Republic of Ireland, Your Honor.

JUDGE FOR THE RECORD

Republic of Ireland, also known as Eire.

MS. PIKE TO JUDGE

That is correct, Your Honor.

JUDGE TO MR. BLACKMAN

[41] Q. And, does the Service wish an alternate?

A. Your Honor, the Service, in the first instance, opposes the designation of the Republic of Ireland on the ground that the respondent's deportation to the Republic of Ireland would be prejudicial to the interest of the United States. .

Q. Why?

A. And, the Government further wishes to designate the United Kingdom as an alternate country of deportation.

Q. The United Kingdom and Colonies?

JUDGE FOR THE RECORD

The Service wishes the designation of the United Kingdom and Colonies. I have no objection to that.

MS. PIKE TO JUDGE

Q. Your Honor. .

A. Wait. Before we proceed we'll hear from both of you.

JUDGE TO MR. BLACKMAN

Q. Why would his deportation to Eire, excuse the shortened term, be prejudicial to the interest of this government?

A. Your Honor, as I had indicated to you at the outset and as I'm sure you're aware, this is not your ordinary case. The respondent, quite simply, is a terrorist. He blasted his way out of a prison in Northern Ireland; absconded to the Republic of Ireland; obtained a fraudulent [42] passport in the Republic of Ireland; came to the United States and was living unlawfully in the United States. The respondent was in prison in Northern Ireland, having been convicted of the crime of murder, possession of a weapon, membership in a pr[o]scribed organization, that organization being the [Provisional] Irish Republican Army. As I'm sure Your Honor is aware, the Board of Immigration Appeals in matter of McMullen has characterized the [Provisional] Irish Republican Army as a clandestine terrorist organization committed to the use of violence to achieve its objectives. McMullen is Interim Decision 2967 . . it's as yet unbounded volumn eighteen. The United States has taken a very firm stand against world wide terrorism. Not only terrorism involving the highjacking of the aircraft in Pakistan, the bombing of buildings in the Middle East but also, indiscriminate killing in Northern Ireland and, in fact, acts of terrorism anywhere in the world. As you know, the government of Great Britain sought to extradite respondent for his crimes from the United States. That did not succeed. The United States has an obligation to the world community to see that terrorist are, in fact, punished for their deeds. To allow Mr. Doherty, the respondent, to leave the United States, to go to the Republic of Ireland where it's not all clear that he will be punished for his crimes and he was, in fact, convicted of the crimes of murder and other acts of terrorism would be contrary to the public interest as is contrary to the stated [43] policy of this government to fight terrorism. I have a few documents that I would like to submit for Your Honor's consideration which may give you a sense of the Government's stance and the Government's position. This is a copy of a speech given by Secretary of State Shultz on

October 25th, 1984 on the subject terrorism and the modern world. He speaks about the terrible crimes of terrorist and the commitment of the United States Government to combat terrorism and to insure that terrorist who apprehended are, in deed, punished. And, I would submit that for your consideration, Your Honor.

JUDGE TO FOR THE RECORD

Does Ms. Pike have . . this is non-evidentary and what I'm going to do is mark the non-evident[i]ary documents with lettered Exhibits so that they are not confused, if there is an appeal, with the numbered Exhibits which are evident[i]ary. So, I'm marking this as Exhibit A. It's solely in the matter of a brief argument by the Government.

JUDGE TO MS. PIKE

Q. Correct? Ms. Pike, you understand?
A. Yes, Your Honor.
Q. Okay.

JUDGE FOR THE RECORD

There is no objection and you can note that.

JUDGE TO MS. PIKE

Q. Do you have a copy of this, Ms. Pike?
[44] A. I do not.
Q. Are you interested in reading this?
A. Not particularly, Your Honor.

JUDGE TO MR. BLACKMAN

Q. I don't know how relevant this is, that's the point, Mr. Blackman.

A. Your Honor, I suppose that you will have to determine the relevance of it and give it the appropritae weight that you feel it deserves.

Q. Fine. It's in the record as Exhibit A, non-evident[i]ary record.

A. Thank you. Your Honor, I would also like to submit for your consideration a statement by Abram D.

Sofare (phonetic spelling) [Sofaer], legal advisor for the Department of State before the Senate Committee and Relations August 1, 1985. A statement that was made in connection with the extradition supplementary treaty concerning the extradition treaty between the government of the United States of America and the government of the United Kingdom and Northern Ireland. I believe this again is indic[ative] of the Government's stance against terrorism and our commitment to fight terrorism throughout the world. And, I would like to note that Judge [Sofaer] expresses his frustration when he says in such cases the U.S. is limited to deporting such persons to some third country where they can continue to [elude] justice. I would submit that Judge [Sofaer] was under, with all due [45] respect, in this apprehension . . that it is, in fact, for you to determine that the respondents' deportation to the Republic of Ireland would be prejudicial to the interest of the United States Government. I would ask again that you receive that and . .

Q. Exhibit B. You have no copy for Ms. Pike?
A. No, I regret we do not, Your Honor.

JUDGE TO MS. PIKE

Q. Ms. Pike, you will be entitled to a copy of these documents if you wish.
A. Thank you, Your Honor.

MR. BLACKMAN TO JUDGE

Q. Your Honor, I's also like to submit some selected articles for your perusal from various newspapers which, again, stress commitment of the United States in the matter of terrorism and terrorist. Again, I regret, I have no copies of that.

JUDGE FOR THE RECORD

I have before me a New York Times article . . it looks like an editorial, the extradition thicket of December of 1984, where Mr. Doherty is mentioned by name; and, also, an article by the Philadelphia . . an article in the

Philadelphian Inquirer of March 24, 1986 concerning . . the title of Irish Free Woman Sought by Great Britain. Thirdly, there is an article in the New York Post of May 27, 1986 "U. S. British exposition treaty is part of the war on terrorism. And, [46] then, there is a New York Times article of July 18, 1986 "patched by Britain on extraditions backed by Senate, measure is retroactive; treaty favored 8710 allows return of IRA fugitives and certain terrorist; and, lastly, an article . . it doesn't indicate where this if from, but it says, "ABA hears Britis[h]terrorism views; Thacher calls for cooperation and relentless opposition". These articles . .

JUDGE TO MS. PIKE

Ms. Pike, you will be entitled of them if you wish.

JUDGE FOR THE RECORD

Will be marked as a Joint Exhibit C.

JUDGE TO MR. BLACKMAN

Q. Your Honor, I have one final document to offer you. It's a copy of an affidavit that was submitted in connection with the extradition proceedings. I don't submit it as much for what's contained in the affidavit portion itself but for the attachments which constitute statements on terrorism that were adopted at the Economic Summit Conferences held in [Ottawa] on July 21, 1981 and London June 9, 1984 and I think that it's important to note that in the June 9, 1984 conference one of the p[ro]posals discussed was consultation as far as possible . . consultation as far as possible, cooperation over the expulsion from their countries of know[n] terrorists, including persons of diplomatic status involved in terrorism; and, I submit that [47] also for your perusal. And, again, I apologize, I have no copies for Counsel.

JUDGE TO MS. PIKE

Q. Are you familiar with this, Ms. Pike?
A. I have seen it before, yes, Your Honor.

JUDGE FOR THE RECORD

Exhibit D.

MR. BLACKMAN TO JUDGE

Q. Your Honor, I think that I would finally submit that . . you've indicated that the material that I have submitted to you, while informative, may not be evident[i]ary in nature.

A. Correct.

JUDGE FOR THE RECORD

Let the record show that copies are being made for Ms. Pike at this time, Exhibits A through D.

MR. BLACKMAN TO JUDGE

Q. In a sense, what you have asked me to do is to prove what I say, that it's prejudicial to the interest of the Government that respondent be removed to the Republic of Ireland. In our pre-hearing conference, which I don't know if it was entered on the record, I indicated to you that this matter is of some concern at the highest levels of government and that it was under consideration by the legal advisor to the State Department and will be under the personal review of Attorney General [Meese] this coming week. I would suggest [48] again that we adjourn the proceedings for a brief period of time to allow the Government to present something in the nature of proof on this issue. And, I say again that given the length of the proceedings and the amount of litegation that has been involved on various aspects of the case, I don't think that it's unreasonable to grant a short adjournment on this issue which I think that you have to agree is a significant one.

JUDGE TO MS. PIKE

Q. Now, Ms. Pike, there were two questions that you can address if you'd like.

A. Yes.

Q. The issue has been raised by the Service that it would be prejudicial to this country by removing the alien to Eire and the second issue is the alternate designation of the United Kingdom and Colonies. Do you wish to address either or both of those issues?

A. Yes, Your Honor. Relative to the issue of Mr. Doherty's designation of the Republic of Ireland, I would like to submit for the record documents that will clearly establish his connection with the Republic of Ireland.

Q. Oh, I'm satisfied that . .

A. I understand that, Your Honor, but I would like to submit them for the record so that there is no question about his status, given the Government's submission of their memorandum. I would like to submit for Your Honor an [49] affidavit setting out his Irish citizenship. The Irish Nationality and Citizenship Act of 1956 . . the. .

Q. Well, I would say that. .

A. I'd like to finish if I might, Your Honor . . the Irish Constitution and a certified copy of Mr. Doherty's birth certificate because I think his connection with the Republic of Ireland is central to Mr. Blackman's argument. Mr. Doherty is doing nothing more than designating a country which is the country of his birth and of his citizenship. He has strong ties with it and therefore it seems to me that it becomes commensurately more difficult to argue; that the accomplishment of his deportation to that country is prejudicial to the interest of the United States. He is not designating a third country, foreign to him or foreign to these proceedings; therefore, I would like the record to indicate that these Exhibits have been received and I have copies for Mr. Blackman.

Q. Is this on argument? In other words, it would be Exhibit E . . just like . . in other words, it's not going to be evident[i]ary. This is solely on the isuse . . a brief to the court. Is that what you're saying?

A. It goes to his designation, Your Honor.

Q. I don't think that there was any issue as to the designation. I'll take it as argument.

A. All right. Very good, Your Honor. Would you have them marked in that regard?

[50] Q. Yeh.

JUDGE FOR THE RECORD

Exhibit E.

MR. BLACKMAN TO JUDGE

Q. No objection, Your Honor.

A. Very well.

JUDGE TO MS. PIKE

Q. Could I have them, please?

A. Yes. That's your set, Your Honor.

MS. PIKE TO MR. DOHERTY

Q. Mr. Doherty, this is your set, absent the birth certificate, that's gives you . . of course, yourself . . already marked earlier.

JUDGE FOR THE RECORD

Since Ms. Pike has already identified these documents I won't repeat it for the record.

JUDGE TO MS. PIKE

Q. Ms. Pike, do you wish to address orally the issue that was raised by Mr. Blackman that it would be prejudicial to send Mr. Doherty back to Erie?

A. I do, briefly, Your Honor. I would simply like to point out that we've been treated to a rather provocative recitation of Mr. Doherty's history and a succession of newspaper articles having to do with the position of the present administration on what Mr. Blackman refers to as terrorism. It seems to me, Your Honor, that the issue before [51] you is not terrorism but rather the impartial administration of the immigration laws of this

country. We are before Your Honor in a proceeding brought by the Immigration and Naturalization Service to accomplish the deportation of Mr. Doherty. We are here before Your Honor today because we have conceded his deportability. The Service now takes the position that he should not be able to be deported to other than the United Kingdom because the British government seeks his extradition to the United Kingdom and was unsuccessful in obtaining it through an extradition proceeding that had, it is true, a tortuous history, and I would add with result, adverse to the Government at every level of those proceedings. That being so, Your Honor, the argument put before you today, that it would be prejudicial to the interest of the United States to deport Mr. Doherty to the Republic of Ireland, is simply an attempt to accomplish, through the immigration laws, what has not been able to be accomplished under the appropriate set of laws and statutes that govern extradition. That is an improper [*sic*] of the immigration laws under the circumstances and the effort to argue that his deportation to the Republic of Ireland flows . . I'm sorry, the argument that it would prejudicial to deport him to the Republic of Ireland flows from the Government's inability to extradite him. It should not be permitted to frustrate the immigration laws of the United States. He is deportable. We have conceded that. He should [52] be deported. It is that simple.

Q. And, what about the other issue about the alternate designation? What if Eire doesn't accept him?

A. Your Honor, we are assured that Ireland will accept him and that there is no basis under Irish law not to accept him.

Q. All right. So, you have no objection, then, to the United Kingdom and Colonies being designated as an alternate?

A. That's correct, Your Honor.

Q. Now, the only issue that I have remaining is whether Mr. [Meese] should be given any opportunity to present evidence that it would prejudicial to the best interest of this country to send him to Ireland, to Eire. Do you object to Mr. [Meese] giving me a statement on that, or his office?

A. For the record, I would object to a further adjournment for that purpose, Your Honor.

Q. I think, in good conscience, I have to agree with Mr. Blackman that there has been a very, very long proceeding here and a few more days, I can't see would upset what you're seeking. Next Friday will be the deadline to receive any information . . at this same hour.

JUDGE TO MR. SOMERSTEIN

Q. Mr. Somerstein?

A. Well, Your Honor, we've finished the proceeding.

[53] Q. I haven't even heard from Mr. Helton.

A. Mr. Blackman has been requesting time to get a statement of the Government's position since last Friday and these proceedings have been long and tortuous. They've been over three and one half years, now. Mr. Doherty, as Ms. Pike said, has prevailed at every step of the way. .

Q. I agree.

A. . . but, has remained in detention. He now. .

Q. Correct.

A. . . concedes his deportability so he can go home to his family; so he can go home to the country of his birth. Mr. Blackman has presented extensive statements reflecting the position of this administration to this court. It seems that there is little else that could be said by anyone on the subject of international terrorism that is not already before Your Honor. .

Q. No, but, I still haven't heard anything specific why it would prejudicial to this country to send him to Eire and Mr. Blackman says that Mr. [Meese] would consider that during the week and if he comes up with anything, fine, and we'll consider it and if he doesn't, then,

I'll enter my order Friday morning. It's as simple as that.

A. Your Honor, Mr. Blackman asked for this adjournment to today, it seems to me, for exactly for that purpose. And, every day of delay now works to the substantial prejudice of Mr. Doherty. It results in his [54] continued detention.

Q. I understand that, but, I think it . . personally, it's a reasonable request considering the length of time involved. We did finish the hearing. The hearing is finished for all intents and purposes; and, all we're waiting for is one piece of information that one Government could furnish me. Maybe there is something neither you nor I have heard that could influence that decision . . whether I designate that country.

A. Your Honor, my only request, then, would be for a briefer adjournment. It seems that this matter has been the subject of Mr. [Meese's] attention for some three years now.

Q. I'm sure Mr. Blackman would be the first to tell you he wants to finish this case as quickly as possible.

JUDGE TO MR. BLACKMAN

Q. Mr. Blackman, all I can employ is that you seek the answer from . .

A. To the best of my ability, Your Honor.

Q. . . as quickly as possible and as soon as you hear if you could contact Ms. Pike or Mr. Somerstein and Mr. Helton and myself, I'd appreciate it.

A. I will do that, Your Honor.

JUDGE FOR THE RECORD

Next Friday at 8:15, which is the 19th, and I promise we'll have an answer and we'll render the decision at that time.

[55] JUDGE TO MR. SOMERSTEIN

Q. In other words, I'm not going to reserve any decision, Mr. Somerstein. Do you understand?

A. Yes.

JUDGE TO MS. PIKE AND MR. HELTON

You will have a decision on Friday.

MR. SOMERSTEIN TO JUDGE

Q. And, I certainly understand that, Your Honor.

A. Okay. Very well.

JUDGE FOR THE RECORD

Hearing is closed . . ah, adjourned.

HEARING IS ADJOURNED

AFFIDAVIT OF TERRELL E. ARNOLD
(dated June 14, 1984)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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83 Cr. Msc.

IN THE MATTER OF THE REQUESTED EXTRADITION OF JOSEPH PATRICK THOMAS DOHERTY BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN and NORTHERN IRELAND

WASHINGTON, D. C.) ss.:

Terrell E. Arnold, being duly sworn, deposes and says:

1. I am Deputy Director, Office for Counter-Terrorism and Emergency Planning in the Department of State and have held that position since June 1983. I have been duly authorized to express to this Court the views of the Department of State with respect to the requested extradition of Joseph Patrick Doherty ("Doherty") and the claimed applicability of the political offense exception in this case.

2. In the opinion of the Department of State the political offense exception is particularly inappropriate to the facts of this case because Doherty's crimes, as the record indicates, include (i) a murder that was carried out by forcibly taking over a private dwelling and taking civilian citizens hostage, and (ii) aggravated assault in connection with Doherty's escape from lawful custody.

3. The application of the political offense doctrine to deny extradition in this case could cause damage in relations between Great Britain and the United States. Damage to U.S. foreign relations, however, would not

necessarily be limited to Great Britain but could extend to other countries with strong national policies against terrorism. Moreover, application of the political offense doctrine to deny extradition would impede the diplomatic efforts of the United States to suppress international terrorism and undermine efforts by this country to foster multilateral cooperation in this area, an essential condition to the eradication of spreading international terrorist activity.

4. In this connection, an important expression of U.S. anti-terrorism policy may be found in the "Statement on Terrorism" issued on July 21, 1981 at the Ottawa Summit on behalf of the participants, which included the President of the United States and the Prime Minister of Great Britain. That statement, a copy of which is appended hereto as an Exhibit, sets forth the serious concerns of the Summit participants regarding the importance of denying sanctuary to terrorists. Those views were reiterated during the recent Economic Summit in London. (See attached Communique dated June 9, 1984.) In the opinion of the Department of State, application of the political offense exception to deny extradition in this case would in practical terms enhance the risk that the United States would become a haven for terrorist fugitives. Moreover, such an application of the political offense doctrine to prevent Doherty's extradition would provide a useful precedent to terrorist organizations operating against this country who, after committing crimes here, may flee abroad and claim that their crimes in this country were political offenses.

/s/ Terrell E. Arnold

Sworn to before me this
14th day of June, 1984

/s/ [Illegible]
Notary Public
My Commission Expires June 15, 1984

TRANSCRIPT OF HEARING IN DEPORTATION PROCEEDINGS
(September 19, 1986)

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[56] JUDGE FOR THE RECORD

Resuming, I hope for the last time, the case of Joseph Patrick Thomas Doherty; A 26 185 231; still represented by the office of Pike and Somerstein of 401 Broadway; New York, New York 10013. Allen Page is here to assist Mr. Blackman and therefore the Government on September 19, 1986.

JUDGE TO MS. PIKE

Q. Ms. Pike, you're speaking for the alien?
A. Ah, yes, Your Honor.
Q. And, you're waiving the presence of Mr. Doherty again?
A. That' so, Your Honor, and I would also add that Mr. Helton, of course, continues his presence in the case but he is in Amsterdam today.
Q. Sure.

JUDGE TO MR. BLACKMAN

Q. Mr. Blackman, you have no objection to Mr. Doherty's absence being waived?
A. I do not, Your Honor.

JUDGE FOR THE RECORD

We continued the case, as we all know, so that the Government could advise on the issue of discretion, with respect to the designation of Eire as the country of deportation designated by the alien.

JUDGE TO MR. BLACKMAN

[57] Q. Anything, Mr. Blackman?
A. Your Honor, the Government has nothing further to submit to you at this time. I would advise you, Your

Honor, that in a telephone conversation just a few moments ago with Paul Schmit, the acting general counsel of the Immigration and Nat[ur]alization Service, I was advised that this matter still is under review at the highest levels of the Justice Department. At this time, Your Honor, I would only. .

JUDGE FOR THE RECORD

Off the record.
Back on the record.

MR. BLACKMAN TO JUDGE

A. Your Honor, at this time I would just reiterate the Government's concern that the respondent's deportation to Eire or the Republic of Ireland would, in deed, be prejudicial to the interest of the United States and be inconsistent with the Government's stated policy to combat world-wide terrorism; and, beyond that, Your Honor, I have nothing further.

JUDGE TO MS. PIKE

Q. Ms. Pike, do you have anything to add or do you rest?
A. Your Honor, I would simply stand with the arguments I raised at our last hearing.
Q. You rest, then?

[58] MR. BLACKMAN TO JUDGE

A. The Goverment rest.

JUDGE TO MS. PIKE

Q. Rest?
A. Yes, Your Honor.

JUDGE RENDERS ORAL DECISION

JUDGE TO MS. PIKE

Q. Do you accept this as a final decision, Ms. Pike?
A. I do, Your Honor.

JUDGE TO MR. BLACKMAN

Q. Mr. Blackman?
A. The Government reserves appeal, Your Honor.

JUDGE FOR THE RECORD

Let's see. Today is the 19th, so that's the 29 . . reserved by Service to September 29, 1986.

JUDGE TO ATTORNEYS

Q. Anything further by either side?

MS. PIKE TO JUDGE

A. No, Your Honor.

JUDGE TO MR. BLACKMAN

Q. Mr. Blackman?
A. Nothing else, Your Honor.

JUDGE FOR THE RECORD

The hearing is closed.

THIS HEARING IS CLOSED.

AFFIDAVIT OF STEPHEN S. TROTT
ASSOCIATE ATTORNEY GENERAL
(dated February 19, 1987)

WASHINGTON, D.C.) s.s.

STEPHEN S. TROTT, being duly sworn, deposes and says:

1. I am the Associate Attorney General of the United States and have been so since September 12, 1986. As such, I am charged by the Attorney General with, *inter alia*, the responsibility of overseeing the operations of the United States Department of Justice's programs and initiatives concerned with criminal matters and matters involving counter-terrorism.

2. Pursuant to Title 8, United States Code, Section 1253(a), "[t]he deportation of an alien in the United States . . . shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, *unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States.*" * * * (Emphasis added).

3. Joseph Patrick Thomas Doherty, the subject of the deportation proceedings pending before this body, has designated the Republic of Ireland as the country to which he wishes to be deported.

4. As Associate Attorney General, I conclude that deporting Joseph Patrick Thomas Doherty to the Republic of Ireland would be prejudicial to the interests of the United States. I arrive at this conclusion based upon the facts in this case as set forth in paragraphs 5 through 7, and the policy considerations set forth in pargrapahs 8 through 11.

5. In proceedings on the request by the United Kingdom for the extradition of Doherty under the Treaty on Extradition between the United States of America and the United Kingdom of Great Britain and Northern Ireland, signed at London June 8, 1972 (entered into force

January 21, 1977) 28 UST 227, TIAS 8468 (the Treaty), United States District Judge John E. Sprizzo found that Doherty was a member of the Provisional Irish Republican Army (PIRA). Doherty testified that on May 2, 1980, he and several members of the PIRA:

> . . . took over a house at 371 Antrim Road in Belfast, and awaited a British Army convoy. Some three or four hours later, a car stopped in front of 371 Antrim Road and five men carrying machine guns emerged. These men, members of the Special Air Service of the British Army ("SAS"), and Doherty's group fired shots at each other.
>
> In the exchange of gunfire Captain Herber Richard Westmacott, a British army captain, was shot and killed. • • •

In Re Doherty, 599 F. Supp. 270, 272 (S.D.N.Y. 1984).

6. Doherty and his fellow gunmen were apprehended, tried, and convicted of murder, attempted murder, possession of firearms and ammunition, and belonging to a proscribed organization. On June 10, 1981, after their trial, but before entry of judgment, Doherty and a number of his PIRA comrades escaped from prison, taking a prison guard hostage, beating him, and inflicting injuries requiring 26 sutures to his head. All of the escapees except Doherty were later apprehended in the United Kingdom. Doherty was subsequently sentenced to life imprisonment in the United Kingdom.

7. Efforts to extradite Doherty from the United States were unsuccessful, because the district court concluded that the crimes Doherty committed in Northern Ireland were political offenses within the meaning of Article V (1) (c) (i) of the Treaty. *In Re Doherty*, 599 F. Supp. 270, 277 (S.D.N.Y. 1984). The United States was unsuccessful in its attempt to obtain collateral judicial review of this determination. *United States v. Doherty*, 615 F. Supp. 755 (S.D.N.Y. 1985), *aff'd.*, 786 F.2d 491 (2d Cir. 1986).

8. It is the position of the United States Government that the crimes committed by Doherty—hostage taking, murder, and assault with intent to commit murder—are terrorist offenses. This position is reflected in the testimony I gave concerning the Supplementary Extradition Treaty between the United States and the United Kingdom of Great Britain and Northern Ireland (entered into force December 23, 1986) before the United States Senate Committee on the Judiciary, on November 5, 1985. This position is also reflected in the testimony on the same subject given the same day before the same body by Judge Abraham D. Sofaer, Legal Adviser for the United States Department of State.

9. It is the policy of the United States that those who commit terrorist offenses should not escape due punishment through international flight. If Joseph Doherty is permitted to go to the Republic of Ireland, where he will not be punished for his role in the events of May 20, 1980, it will signal to other terrorists that they may commit terrorist offenses, flee to the United States to avoid prosecution or punishment, then select a country to which to be deported where they will be safe from punishment for their crimes. The United States is currently encouraging several foreign countries to arrest and surrender to us terrorists accused of acts of terrorism against citizens of the United States, including Abu Abbas, the mastermind of the *Achille Lauro* incident. Therefore, it would be prejudicial to the interests of the United States to be perceived as aiding a person who has committed terrorist offenses to escape punishment.

10. It is the intention of the United States Government to protect its citizens against the sort of terrorist acts that have been specifically directed against United States citizens in recent years. In my view, to achieve this protection requires this Government to demonstrate by its acts in the international arena the resolve to deny terrorists any possible benefit from flight to the United States. It is an important expression of the United States policy against terrorism that we deny sanctuary to ter-

rorists. (See the Affidavit of Terrell E. Arnold, Deputy Director, Office for Counter-Terrorism and Emergency Planning, Department of State, June 14, 1984; a copy of which is attached.)

11. I believe that this posture should be manifested not only in this Government's adherence to, and advocacy of, international agreements on terrorism, but in the administration of this country's immigration laws as well. If Doherty is permitted to select a country of deportation where he will escape punishment for murder, attempted murder, illegal possession of firearms, and membership in a prohibited terrorist organization, it will signal other terrorists that when they are apprehended within the United States, the Government is powerless to prevent them from choosing to be deported to countries where they may evade the consequences of their acts. In view of the discretion in deportation matters granted the Attorney General by Congress in Title 8, United States Code, Section 1253(a), the Government must not permit this perverse result.

12. Wherefore, I conclude that it would be prejudicial to the interests of the United States to deport Joseph Patrick Thomas Doherty to the Republic of Ireland and that he should be deported to the United Kingdom, pursuant to Title 8, United States Code, Section 1253(a). *United States v. Shaughnessy*, 114 F. Supp. 791, 794 (S.D.N.Y. 1953).

Feb. 19, 1987
Date

/s/ Stephen S. Trott
STEPHEN S. TROTT
Associate Attorney General

Sworn to before me this
19th day of February, 1987.

/s/ Audrey J. Williams
Notary Public

MOTION OF RESPONDENT
TO REOPEN OR RECONSIDER
(filed in deportation proceedings on December 2, 1987)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

File No. A26 185 231 (NYC)

IN THE MATTER OF JOSEPH PATRICK DOHERTY, RESPONDENT

MOTION OF RESPONDENT TO REOPEN
OR TO RECONSIDER

Upon the record in these proceedings, the attached affidavits of MARY (MAUREEN) DOHERTY, sworn to on December 2, 1987, and MARY BORESZ PIKE, also sworn to on December 2, 1987, and the exhibits attached thereto, the respondent JOSEPH PATRICK THOMAS DOHERTY, through his counsel, moves the Board of Immigration Appeals (BIA) for an order reopening the deportation proceedings and remanding this case to the Immigration Judge for the purpose of a hearing on respondent's claims for asylum under section 208 of the Act, withholding of deportation under section 243(h), and for redesignation of country of deportation under section 243(a).

Respondent's motion is made pursuant to 8 C.F.R. 3.2, 3.8, and 242.22.

Should the deportation order entered herein on September 19, 1986, become final during the pendency of the

instant motion, respondent requests the Board to stay the execution of said order pending its determination of the motion and also pending the filing and disposition of any petition for review or appeal by respondent.

/s/ Mary Boresz Pike
SOMERSTEIN & PIKE
By: MARY BORESZ PIKE
401 Broadway, 27th Floor
New York, New York 10013
(212) 925-3232

Attorneys for Respondent
Joseph Patrick Thomas Doherty

Dated: December 2, 1987
New York, New York

Of Counsel:

ARTHUR C. HELTON
Lawyers Committee for
International Human Rights
330 Seventh Avenue
10th Floor North
New York, New York 10001
(212) 629-6170

**AFFIDAVIT OF MARY BORESZ PIKE,
COUNSEL FOR RESPONDENT,
AND SELECTED EXHIBITS THERETO
(dated December 2, 1987)
(filed with Motion of Respondent to Reopen or Reconsider)**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

File No. A26 185 231 (NYC)

IN THE MATTER OF JOSEPH PATRICK DOHERTY, RESPONDENT

AFFIDAVIT OF MARY BORESZ PIKE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARY BORESZ PIKE, being duly sworn, hereby deposes and says that:

1. The respondent JOSEPH PATRICK THOMAS DOHERTY is represented by the firm of Somerstein & Pike; I am a partner in that firm.

2. I make this affidavit in conjunction with the respondent's motion to reopen or to reconsider.

3. The motion is based on the administrative record in these proceedings, the affidavit of Mary (Maureen) Doherty, the instant affidavit, and the supporting documents appended to the Doherty and Pike affidavits.

4. The motion to reopen or to reconsider is based on circumstances which have arisen subsequent to all prior proceedings had herein.

5. The event warranting the motion did not occur until December 1, 1987, and this being so, the evidence offered herein was not available and could not have been discovered or presented at any former hearing.

6. For purposes of the instant motion, the following statements are made: respondent is not the subject of any pending criminal proceeding under section 242(e) of the Act; and, warrants for respondent's arrest were issued some years ago by the Government of the United Kingdom and Northern Ireland, charging respondent with various offenses it alleged to be criminal in nature. On the basis of these charges, which related to an escape by respondent from the Crumlin Road Jail in Belfast, Northern Ireland, in 1981, and others on which respondent had already been sentenced to life imprisonment pursuant to trial in a non-jury Diplock court proceeding, the Government of the United Kingdom of Great Britain and Northern Ireland requested respondent's extradition. In conjunction with the extradition proceedings, the circumstances of the offenses were examined. United States District Court Judge John E. Sprizzo concluded that the offenses were neither violative of international law nor inconsistent with international standards of civilized conduct. He further determined that the facts of Mr. Doherty's case "present the assertion of the political offense exception in its most classic form." *Matter of Doherty by the Government of the United Kingdom*, 599 F.Supp. 270, 274, 275, 276 (S.D.N.Y. 1984). On the basis of these determinations, Judge Sprizzo entered an order denying the request for Mr. Doherty's extradition, thereby barring his return to the United Kingdom, on the ground that the offenses for which extradition was sought were not common crimes but rather political offenses.

7. The government's subsequent efforts to have the order barring extradition to the United Kingdom reversed were unsuccessful, and the government has declined to file a new request for Mr. Doherty's extradition, an avenue which has at all times been open to it in service of its pursuit of Mr. Doherty's return to the United Kingdom. The United States Court of Appeals for the Second Circuit explained this default by observing that the government's failure to pursue this obvious avenue of relief was a function of its fear that it would only lose again. *See United States v. Doherty*, 786 F.2d 491, 500 (2d. Cir. 1986).

8. The government's time to seek review of that Second Circuit decision expired on September 2, 1986. Consequently, the order previously entered by Immigration Judge Howard I. Cohen, which had stayed the deportation proceedings then pending against Mr. Doherty until such time as the extradition proceedings were finally determined, lapsed. The extradition proceedings had been finally determined, and the years of litigation had resulted in successive judgments which operated to bar Mr. Doherty's removal to the United Kingdom.

9. On September 3, 1986, Mr. Doherty's counsel notified the presiding immigration judge that they wished to appear before him.

10. The requested conference was had on September 5, 1986, and through counsel, Mr. Doherty advised the immigration judge that he wished to consent to deportation.

11. Mr. Doherty exercised his substantive right under the Immigration and Naturalization Act to designate a country of deportation, designating the Republic of Ireland, which is his country of citizenship, as well as the country where he had been living and from which he departed for the United States.

12. The Immigration and Naturalization Service (INS) opposed Mr. Doherty's designation on the ground that it would be prejudicial to the interests of the United States

for Mr. Doherty to be reported other than to the United Kingdom.

13. In making his designation, Mr. Doherty was aware of and relied on the facts: that 8 U.S.C. 1253 conferred upon him the right to designate the country of deportation; that this right is a substantive right; that in the entire history of the statute no potential deportee's designation of country had ever been rejected on the ground that deportation thereto would be prejudicial to the interests of the United States; that Ireland, his designated country and country of citizenship, would accept him and gave written confirmation that it would do so; and, finally, that these circumstances in combination rendered the Service's designation of the United Kingdom a mere formalism.

14. In tandem with the immigration judge's determination of deportability, Mr. Doherty's counsel, in reliance on the above-referenced factors, withdrew his claims for relief from deportation, previously-lodged on June 28, 1983.

15. On September 19, 1986, the immigration judge entered an order directing that Mr. Doherty be deported to Ireland.

16. The immigration judge's order was entered only after the Service had been given repeated adjournments, over respondent's objections, to enable it to come forward with evidence of the prejudice to the interests of the United States that the Service claimed would be occasioned unless the immigration judge's decision was reversed.

17. Despite frequent statements to the immigration judge by the Service that Mr. Doherty's case was "unique," was being considered at the "highest levels of government," and would "be under the personal review of Attorney General Meese" the coming week, the INS never presented any evidence to support its claim of prejudice. Nor did it, on September 19, 1986, the date to which the hearing had been most lately adjourned by the immigration judge at its request, ask for a further adjornment. It merely stated it had nothing further to submit and rested its case. Record at 37, 47, 57-58.

18. Subsequent to the immigration judge's September 19, 1986, decision, the Service filed a notice of appeal.

19. Pursuant to the Service's notice of appeal and to a motion to reopen lodged by it subsequent to the Board's decision adverse to it, the Board has had occasion twice to examine the validity of the order entered on September 19, 1986. On March 11, 1987, and May 22, 1987, it rendered decisions adverse to the Service.

20. The Service thereupon caused the matter to be referred to the Attorney General for review pursuant to 8 C.F.R. 3.1(h)(1)(iii), and it was transmitted to him by the Board under cover of memorandum dated May 29, 1987.

21. Having received notice of the requested referral on June 1, 1987, respondent's counsel immediately called the Attorney General's attention to the fact that Mr. Doherty's *fifth* year of detention without bail was soon to begin and, further, asked to be advised of the procedures which would govern his review. *See* Letter of June 4, 1987, to Attorney General Edwin Meese III from Mary Boresz Pike, appended hereto as Exhibit 1. Five months later, the office of respondent's counsel received a letter dated October 28, 1987, from Charles J. Cooper, assistant attorney general, advising that the Attorney General "has granted the request of the Immigration and Naturalization Service . . . that he review the decision of the Board of Immigration Appeals involving the deportation of Mr. Doherty." *See* Letter dated October 28, 1987, from Charles J. Cooper to Mary Boresz Pike, appended hereto as Exhibit 2.

22. The letter further advised that although Mr. Doherty had no statutory or constitutional right to present evidence or otherwise have a hearing before the Attorney General, the Attorney General had decided that it would be "appropriate" to permit Mr. Doherty "the opportunity to present his views in writing."

23. Having taken five months to advise Mr. Doherty that he had available not quite 30 days within which to respond, the letter directed that Mr. Doherty submit his brief "on or before December 1."

24. The Service and the Attorney General, aware of the impending implementation of a major change in Irish extradition law that would effectively operate to insure Mr. Doherty's return to the United Kingdom, have calculatedly, willfully, wantonly, and baselessly delayed and impeded the expeditious conduct of these proceedings so as to insure that the order directing Mr. Doherty's deportation to Ireland not be executed prior to December 1, 1987, if it be executed at all.

25. On December 1, 1987, the Extradition (European Convention on the Suppression of Terrorism) Act came into operation in the Republic of Ireland. *See* Exhibit 3 for the text of the Act.

26. The provisions of the Act circumscribe the existing statutory law and decisional law so as to remove from the Irish courts the authority to decide whether a given offense is a political offense or an offense connected with a political offense.

27. It is intended that under the provisions of the Act the political offense exception will no longer operate in a case such as Mr. Doherty's to bar extradition from the Republic of Ireland to other countries.

28. To deport Mr. Doherty to Ireland subsequent to December 1, 1987, the effective date of the Extradition Act of 1986, is tantamount to deporting him to the United Kingdom. By virtue of the order of deportation entered September 19, 1986, Mr. Doherty could be deported to the United Kingdom only "if Eire advises the Attorney General that it is unwilling to accept respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory." Oral Decision of September 19, 1986, at 4.

29. Such is not the case. Ireland is bound to accept Irish citizens into Ireland upon deportation, subject to being satisfied as to the person's identity and Irish citizenship.

30. There is not now nor has there ever been any question of Ireland's willingness to accept Mr. Doherty into the national territory, and both the Service and the immigration judge have been aware of this fact for in excess of a year.

31. Had Mr. Doherty arrived in Ireland prior to December 1, 1987, any request by the British government for his extradition to the United Kingdom would necessarily have been considered pursuant to the statutory arrangements and decisional law which preexisted the Extradition Act of 1986. Under those laws, Mr. Doherty would have been able to resist extradition based upon the same political offense exception which precluded the British government from obtaining his extradition from the United States.

32. The INS has consumed nearly 15 months in appealing the order directing that Mr. Doherty be deported to Ireland in order to insure that at such time as he is deported to Ireland his subsequent extradition to the United Kingdom will, under the terms of the Extradition Act, be a mere formality and a foregoing conclusion.

33. Through this delay, the INS has subverted the integrity of the order directing that Mr. Doherty be deported to Ireland, as opposed to the United Kingdom, this determination of the country of deportation being one that the immigration judge is specifically empowered to make. 8 C.F.R. 242.8(a).

34. That the INS has engaged in dilatory conduct has been the subject of express comment both by the immigration judge and by this Board.

35. The immigration judge stated in his oral decision that "the Service has tried to delay a decision by me." Oral decision at 3.

36. More than six months ago, the Service's conduct had already moved this Board to state that "the glacial pace at which any tangible proof of this (country's) interest was produced seems to belie any sense of urgency or responsibility on the part of the government to proceed promptly in this case." Decision of May 22, 1987, at 5. The Board's statement was prompted by the fact that despite the Service's repeated representations that the case was unique, and of interest at the highest levels of government, and subject to personal consideration by the Attorney General supposedly as far back as September 1986, the Service allowed almost six months to elapse before it produced the affidavit it had promised to the immigration judge in September 1986.

37. The Service has never offered any explanation of why it tried to delay the entry of decision by the immigration judge, nor of why it failed to produce for almost six months the affidavit which ostensibly constitutes evidence of prejudice. Nor did the Office of Legal Counsel offer any explanation of why it took an additional five full months simply to notify the respondent that the Attorney General had accepted the case for review.

38. Significantly, the Service has admitted that its intent is to accomplish a de facto extradition.

39. In October 1987, CBS Sixty Minutes aired a segment devoted to Mr. Doherty's situation. Counsel for the Service stated on the program:

> It's quite clear that in the extradition proceeding the objective was to get Doherty back to the United Kingdom. And in the deportation proceeding our objective is to get him to the United Kingdom. This is just an alternate means to accomplish that.

See CBS Sixty Minutes transcript at 10, appended hereto as Exhibit 4.

40. The delay has not solely been occasioned by the Service, however, but has also emanated from the Department of Justice itself. After referral of the matter to

the Attorney General for review, the Attorney General did nothing for five full months, at the end of which time a perfunctory letter was sent to respondent's counsel, advising her that the matter had been accepted for review and that any brief on respondent's behalf was to be submitted on or before December 1, 1987, the same day the Extradition Act went into effect. *See* paragraph 21 above. The leisurely pace at which the government has seen fit to proceed is inconsistent with the concern which should be occasioned by respondent's shockingly long period of detention. *See Paulis v. Sava*, 544 F. Supp. 819, 821 (S.D. N.Y. 1982).

41. The preoccupation of the Service—and seemingly the Attorney General as well—with Mr. Doherty's punishment does not justify engaging in delay calculated to deprive the respondent of his substantive right to designate the country of deportation and which vitiates the authority of the immigration judge to determine the country to which a potential deportee will go.

42. Under our system of laws punishment for ostensible criminal acts is the province of a requesting government, and may be meted out by it when an individual is returned to its jurisdiction by the Secretary of State in conformity with the procedures governing internation extradition and set out in 18 U.S.C. 3181 et seq.

43. Mr. Doherty cannot be extradited from the United States to the United Kingdom because the acts for which his extradition was sought were not common crimes but rather classic political offenses.

44. Under these circumstances, the Service's only valid concern is expelling respondent from this country, not seeing that he is deported specifically and only to the country which has been denied his extradition. *McMullen v. INS*, 788 F.2d 591, 596 (9th Cir. 1986).

45. The legitimate office of the INS is to enforce the Immigration and Nationality Act, not the extradition laws of this or any other country. *See United States ex rel. Martinez-Angosto v. Mason*, 344 F.2d 673 (2d Cir.

673 (2d Cir. 1965); A. Helton, "Harmonizing Political Asylum and International Extradition: Avoiding Analytical Cacophony," 1 Geo. Imm. L. J. 457, 479 and nn. 152-156 (1986); M. Roberts, "The Grounds of Deportation, Statute of Limitations on Deportation, and Clarification of the Nature of Deportation," 57 Interpreter Releases 57 (March 31, 1980).

46. The government's conduct of the instant case is calculated to circumvent both the letter and the spirit of the order of deportation directing that Mr. Doherty be returned to Ireland.

47. The government's conduct works severe and substantial prejudice on Mr. Doherty as it insures his return to the United Kingdom, a place where he has a well-founded fear of persecution, and, further, it subjects him to treatment wholly aberrant from that afforded every other deportee, including those in positions identical to Mr. Doherty's.

48. Under these circumstances, respondent is entitled to the relief he seeks in his motion to reopen or to reconsider.

/s/ Mary Borezs Pike
MARY BORESZ PIKE

SUBSCRIBED and SWORN TO before me this 2d day of December, 1987.

/s/ Lynn R. Stockhamer
Notary Public

EXHIBIT 1

SOMERSTEIN & PIKE
Attorneys at Law
401 Broadway
27th Floor
New York, New York 10013

(212) 925-3232

June 4, 1987

Edwin Meese III
Attorney General of the United States
United States Department of Justice
Room 5111
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: In the Matter of Joseph Patrick Thomas Doherty,
A26 185 231 (NYC)

Dear Mr. Meese:

We have learned that the above-referenced matter has been referred to you pursuant to 8 C.F.R. 3.1(h)(iii).

While the BIA chairman's memorandum to you of May 29, 1987, does state the "the alien is detained," the circumstances of his detention merit further reference. Mr. Doherty is detained and has been so since June 18, 1983. His fifth year of detention will soon begin

We trust you will cause us to be advised of the procedures which will govern your review of the Board's decision.

Very truly yours,

MARY BORESZ PIKE

MBP/1
cc.: J. Scott Blackman, Assistant District Director
Deportation

EXHIBIT 2

U.S. DEPARTMENT OF JUSTICE
Office of Legal Counsel

Office of the
Assistant Attorney General

REGISTERED/RETURN
RECEIPT REQUESTED

Washington, D.C. 20530
Oct. 28, 1987

Re: Review of Board of Immigration Appeals' Decision: In re Doherty, No. A26-185-231

Mary Boresz Pike, Esq.
Somerstein & Pike
401 Broadway, 27th Floor
New York, New York 10013

Dear Ms. Pike:

This is to inform you, as counsel of record for Joseph Patrick Thomas Doherty in the above-captioned proceeding, that the Attorney General has granted the request of the Immigration and Naturalization Service (INS), made pursuant to 8 C.F.R. 3.1(h)(1)(iii), that he review the decision of the Board of Immigration Appeals (BIA) involving the deportation of Mr. Doherty. The Attorney General has granted the INS's request so that he may review the BIA's affirmance of the decision of the immigration judge that there was no clear evidence to support the conclusion of the INS that the deportation of Mr. Doherty to the Republic of Ireland would be prejudicial to the interest of the United States and that, instead, he should be deported to the United Kingdom. 8 U.S.C.

1253(a). In his review, the Attorney General will determine whether it is prejudicial to the interest of the United States for Mr. Doherty to be deported to the Republic of Ireland, and whether he should be deported to the United Kingdom. No other issues will be considered by the Attorney General.

The determination under 8 U.S.C. 1253(a) as to whether deportation of an individual to the country he designates would be prejudicial to the interests of the United States and the alternative country to which he should be deported is wholly within the discretion of the Attorney General. Thus, Mr. Doherty has no statutory or constitutional right to present evidence or otherwise have a hearing before the Attorney General. However, in his discretion, the Attorney General has decided that it would be appropriate in this case to give Mr. Doherty the opportunity to present his views in writing.

Accordingly, if he wishes, Mr. Doherty may submit a memorandum addressing the question under review. Associate Attorney General Stephen Trott has prepared an affidavit (attached to which is an earlier affidavit of Terrell Arnold of the Department of State) setting forth the basis for his conclusion that it would be prejudicial to the interest of the United States to deport Mr. Doherty to the Republic of Ireland, and that he should be deported to the United Kingdom. Since the Attorney General will consider Mr. Trott's affidavit in the course of his review of the BIA's decision, Mr. Doherty may wish to respond to the facts and reasoning contained therein in any memorandum he submits to the Attorney General. A copy of Mr. Trott's affidavit is enclosed.

Any memorandum Mr. Doherty submits to the Attorney General should not exceed thirty typewritten pages, double-space on 8½" by 11" paper. The memorandum should be submitted to the Attorney General, and a copy sent to me, on or before December 1. The Attorney General would consider a request to exceed these page limits or

extend the time for filing, but would grant such a request only if he determined it was based on compelling reasons.

If you have any questions concerning this matter, you may contact Bruce Lindsay at 633-3694.

Sincerely,

/s/ Charles J. Cooper
CHARLES J. COOPER
Assistant Attorney General
Office of Legal Counsel

Enclosure

EXHIBIT 4

TRANSCRIPT—60 MINUTES
(October 10, 1987)

14. REASONER Is Joe Doherty an Irish soldier who killed in the line of duty? Or an Irish terrorist who murdered in cold blood? The Justice Department says he's a terrorist who should be returned to the British jail in Northern Ireland from which he escaped. Five federal judges say he is not a terrorist; he's a soldier, and refused to order his extradition. Meanwhile, Joe Doherty continues to sit in an American jail, where he's been for four years, four months, waiting. If it were up to him, he says, he'd like to be deported to the Republic of Ireland, the independent part of that country, where the British can't get their hands on him.

During his four years, four months in New York's federal jailhouse, he has never been formally charged with anything but illegal entry to the U.S. How much longer will he have to sit there?

15. JOE DOHERTY OF THE IRA VTR

TRANSCRIPT

"JOE DOHERTY OF THE IRA"

DOHERTY: At a very young age. I made a commitment to myself that I would sacrifice my life and my years to bring about freedom in Ireland.

REASONER: Freedom for the Joe Doherty's of this world means the violent expulsion of British troops and reunification of Northern Ireland with the Independent Irish Republic. Joe went to war when he was 15. He joined the provisional Irish Republican Army—then the most ferocious segment of the anti-English Movement. He saw some action, but mostly the inside of British jails. Then, he got in on an important operation.

DOHERTY: I was involved in an incident where a British army soldier was killed.

REASONER: Antrim Road in Belfast in 1980 was frequently used by British military convoys. That year, Joe Doherty and three others armed with an American made heavy machine gun and other weapons set up an ambush from the two upper floors of Number 373. They were waiting for a convoy they believed due. After three hours, nothing had happened. But when they dismantled the ambush, a five man British army patrol in civilian clothes and obviously informed charged up and opened fire. Captain Herbert Richard Westmacott led his men up to the front door. He was killed by a burst of fire from a machine gun.

DOHERTY: He had a machine gun and a nine millimeter pistol. And the American government and the British government have . . . have . . . blew up that this is a horrific crime.

REASONER: Captain Westmacott was one of thousands of British soldiers, detached professionals, as opposed to the IRA's passionate amateurs who have died in Northern Ireland. He was a graduate of Britain's West Point, Sandhurst, father of a seven month old daughter

when he died. He got the military cross posthumously for leading his men up to that door on Antrim Road. The men inside, Joe Doherty included, were captured and tried in Belfast under emergency regulations before a judge without a jury. Doherty offered no defense. He refused to recognize the court's jurisdiction over what to him was a battle casualty.

Here at the Crumlin Road Jail in June of 1981 Joe Doherty and seven other IRA provisionals ambushed three guards dressed in their uniforms, and successfully bluffed their way out past three interior checkpoints. They came out through the main gate where there were other provisionals waiting. Security guards across the street at the courthouse opened fire. There was a lot of shooting, but all eight got away. The IRA calls it "The Great Escape". Two days later, with Doherty absent, the court convicted him of murder and other crimes. The sentence was life imprisonment.

DOHERTY: The escape itself was such a prestigious event that Margaret Thatcher swore that she'd get the escapees back because this was a maximum security prison. So there was thousands of troops sent in to search for us and the IRA were in fear that I would be maybe singled out to be assassinated by British Intelligence. And so the IRA made a decision that they would send Joe Doherty, alias, Henry O'Reilly to the city of New York, and here I came.

REASONER: Were you told to be on your good behavior?

DOHERTY: Oh, yeah, yeah. Well, the IRA told me back in Ireland, just go over there and be normal, go watch some baseball . . . just be a part of the scenery, you know. And this is what I did . . . I had a job. I worked.

REASONER: Dohery and a young woman he had met lived in Brooklyn for awhile, and then moved to an Irish neighborhood in Kearney, New Jersey. His job as a brick

layer ran out and he picked up part-time work at Clancey's Bar on New York's east side.

DOHERTY: It was a Saturday morning. It was the 18th of June 1986. I had just opened the bar at eight o'clock in the morning. I knew it was around nine o'clock when I seen a bunch of construction guys come in. So I set up the beers. And I found out that they weren't construction guys. They were the FBI. And they pulled out their identifications and their guns, and they told me that I was under arrest.

REASONER: That was June 1983.

DOHERTY: Yeah.

REASONER: You've been in jail ever since.

DOHERTY: Yeah. Sadly to say.

REASONER: With Joe in custody, the British promptly asked the United States to send him back to Northern Ireland, but a Federal Judge looked at the treaty governing extradition between the United States and the United Kingdom and said that Joe's crime, the death of Captain Westmacott, fell into the section covering political, not criminal acts. Another Judge and the Circuit Court of Appeals agreed.

How do you justify the car bombs and the ambushes and the bloodshed in general?

DOHERTY: Well, how can you justify the ambushes of the redcoats over 200 years ago. The IRA have strict orders that civilians do not be killed. I have seen this order from the IRA. But at time to time we have made terrible mistakes. We have tried to rectify that.

LADY KNIGHT: If a man says, well, I know I did murder, yes, I did kill, I did maim, but I only did it, sir, because I have political convictions. That gives the green light to terrorists all over the world.

REASONER: Lady Jill Knight, a conservative member of Parliament, reflects the anger about Doherty felt by Mrs. Thatcher.

LADY KNIGHT: I just wonder what the attitude of some of the Americans who support the IRA would feel

about an Arab killer who escaped extradition because he claimed political reasons for his activities.

REASONER: We put that question to Connecticut's Democratic Senator, Christopher Dodd. The Germans, for instance, have arrested an Arab who was presumably in on the TWA Beirut hijacking, and the brutal murder of and American sailor. Is that an act of violence for which he should escape extradition?

SEN. DODD: Not at all. Judge Sprizzo who handled the Doherty case I think set out three criteria which are pretty good ones. He said that one, it ought to be a long standing conflict. That you ought to be a part, you have to be a part of an organized military, a paramilitary group, and your target has to be a military target. In the case you've just identified, of course, the TWA Airline or a disco is hardly a military target. So they would not qualify under the Sprizzo criteria.

REASONER: Lady Jill says there is no criteria for killing.

LADY KNIGHT: If a court in the man's country of origin had said, listen to the evidence, had come out with the clear verdict that the man was guilty, then, of course, we would allow extradition because if you don't allow extradition you perpetuate terrorism. And this is one of the major problems on the International scene.

REASONER: The Joe Dohertys of the IRA grew up in streets like these. It's not that the neighborhoods are so awful, but they're unrelieved any joyless. And everything, the games, the old rebel songs, the endless talk of the unemployed dads combine to ready the youngsters for violence and heroics and martyrdom.

The kids in Belfast Catholic ghettos turn to heroics and martyrdom as a way out.

Joe's mother, Maureen Doherty, lives in this typical row house in this typically Catholic neighborhood. Her husband, Joe's father, has been unemployed for six years, also typical.

Is all that worth it? I mean, you've had your son in jail most of his adult life since he's been 15, 16, right?

MAUREEN DOHERTY: Joe has spent most of his teenage years in prison, and his 20s he spent in prison. Now he's 32 years of age, and it doesn't look likely that he'll be out for even his 40s. And I feel very sad that I know he'll never walk the streets here again, no.

REASONER: Prime Minister Thatcher says about your son, murder is murder is murder. What do you say to that

MAUREEN DOHERTY: Well, there's a . . . well, in all wars, murder is murder is murder.

REASONER: It's a war to you.

WOMAN: It's a war. It is. And in all wars, it's murder.

REASONER: End of story? No. Doherty has come up with his own solution. If the Justice Department wants to send me back, he says, okay, send me back, deport me to Independent Southern Ireland, not Northern Ireland. Suddenly, the Justice Department is on the other side. If you're going anywhere, they say, it's back to that jail in British Northern Ireland.

DOHERTY: A few months ago. I conceded and asked to be deported back to Ireland, the South of Ireland, where the British are not in control, and, and surprisingly the State Department said, no, I cannot go. Now I have to stay.

REASONER: They'd like to deport you to the United Kingdom.

DOHERTY: Yeah, they would like to deport me to the British.

REASONER: Jay Scott Blackman is the Immigration Service Attorney who has been involved in the Doherty case from the beginning.

Immigration Judge Harold Cohen ordered Doherty deported to the Republic of Ireland where he faces a ten year prison sentence, and could be extradited to Belfast. Why don't you like that?

MR. BLACKMAN: Because it's the policy of the United States government that persons who commit terrorist offenses should not be permitted to escape the consequences of their acts through international flight. That's just not the way it should be.

REASONER: Doherty's lawyers argue it is out of place for the U.S. government having lost every battle over extradition to try to accomplish the same thing disguised as a battle over simple deportation—a tactic, they say, the government has never used before. The government freely admits its aim is to give Doherty back to the British one way or another.

MR. BLACKMAN: Our position certainly is that this is permissible under the law. It's quite clear that in the extradition proceeding the objective was to get Doherty to the United Kingdom. And in the deportation proceeding our objective is to get him to the United Kingdom. This is just an alternate means to accomplish that.

DOHERTY: I symbolize what's happening in Northern Ireland. The British government have been saying to the American people for the past 15 years that the IRA are terrorists. They're nothing but a bunch of criminals and thugs. And when I came to the United States I was arrested. I came before Federal Courts where Federal Judge made a decision that there is a political war going on in the North of Ireland. And the British blew up over this. They went crazy about it. And they started saying that this judge was bought off and they started saying that these judges don't know nothing.

REASONER: Since we completed that report, still another judicial body—the three-judge Board of Immigration appeals, has also ruled against the government, insisting that Joe NOT be turned over to the British, but be sent to Republic of Ireland. The Matter is now on the desk of Attorney General Edwin Meese. Meanwhile, Joe Doherty's address remains: Metropolitan Correctional Center, New York.

AFFIDAVIT OF MARY (MAUREEN) DOHERTY AND EXHIBIT 1 THERETO
(dated December 2, 1987)
(filed with Motion of Respondent to Reopen or Reconsider)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

File No. A26 185 231 (NYC)

IN THE MATTER OF JOSEPH PATRICK DOHERTY,
RESPONDENT

AFFIDAVIT OF MARY (MAUREEN) DOHERTY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARY (MAUREEN) DOHERTY, being duly sworn, hereby deposes and says that:

1. My name is Mary Doherty. I have always been called Maureen, however, and that is the name I am known by.

2. I am a citizen of Ireland.

3. I live at 136 Upper Meadow Street, in Belfast, Northern Ireland. I live at that address with my husband Joseph and my youngest daughter, Patricia, 23.

4. In addition to Patricia, my husband and I have four other children, three daughters and one son.

5. Our daughters are Anne, 31, Maureen, 28, and Sharon, 26.

6. Our son Joseph is 32 years old. For the past four and a half years, Joseph has been imprisoned in America while the British government sought unsuccessfully to have him extradited.

7. It has been explained to me that the U.S. Immigration and Naturalization Service seeks to have Joseph deported to the United Kingdom.

8. Joseph and I fear that if he is returned to the United Kingdom he will be subject to persecution on account of our religion, which is Roman Catholic, and on the basis of his political opinions, which are nationalist or republican. He has from a very young age held the firm belief that the six counties of northeastern Ireland should not be under British rule.

9. People who hold this belief are known as either nationalists or republicans.

10. We live in north Belfast, in a small housing estate or district. It is known as New Lodge or the New Lodge. It is a neighborhood in which most of the residents are Catholic, and it is known as an area with strong nationalist/republican sympathies.

11. As with the other nationalist/republican districts in north Belfast, the New Lodge is surrounded by loyalist areas. Loyalists are those who oppose the reunification of the six counties which presently constitute Northern Ireland with the 26 counties of Ireland. Loyalists, the military, and the police perceive the New Lodge's residents, correctly, as being strongly nationalist or republican, and we have over the years been the subject of sectarian attacks.

12. Other north Belfast neighborhoods situated similarly to the New Lodge are Ardoyne, Newington, Bawnmore, Glandore, Ligoniel, Lower Cavehill, and Oldpark.

13. Both in the New Lodge and in the other nationalist/republican districts named above, the British Army and the RUC or Royal Ulster Constabulary, which is com-

posed almost entirely of Protestants, are a constant presence. The homes of nationalists are entered and searched at all hours of the day and night, police and army foot and motor patrols regularly stop neighborhood residents for questioning, and although people are frequently taken in for periods ranging from a few hours to seven days, they are usually released without charge after being interrogated as to their activities and political views and those of their family, friends, and neighbors.

14. Having lived in north Belfast all our lives, it is my family's experience that those who live in Catholic districts suffer both at the hands of the security forces, who by their conduct seem to equate residence in such a district with being a "terrorist," and at the hands of the loyalists, who regularly mete out violence to those whom they believe to be nationalists or republicans or simply Catholic.

15. Specific incidents which have occurred form the basis for the belief shared by my son and me that he will be subject to persecution if returned to the United Kingdom.

16. As far back as 1972, my family has been identified by the government as holding political beliefs of the nationalist or republican persuasion. This led to my two oldest children, Joseph and Anne, being interned by the British government. Internment was instituted by the British government in 1971. Joseph was interned when he turned 17. Anne also was interned at age 17, becoming the eighth woman selected by the British government for internment. Both children were held without charges and without trial, Joseph for a period of approximately six months, Anne for substantially longer. I have affixed to this affidavit the document given to Joseph at the time of his internment (Exhibit 1) and a newspaper cutting (Exhibit 2) regarding Anne's internment. Our daughters Maureen, Sharon, and Patricia were too young to be interned.

17. On November 20, 1974, the home in which we were then living on Hallidays Road in north Belfast was

bombed and completely destroyed. The Ulster Freedom Force, a loyalist paramilitary group, claimed responsibility for the bombing. At that time our house was being searched almost daily by British soldiers, who frequently made threatening remarks while carrying out the searches. Some five weeks prior to the bombing, a note written in red ink was put through the door. It said, "Your time is nearly up for living."

18. After the house was bombed in 1974, our neighborhood pub, known as the Starry Plough, was bombed in 1975, leaving one person dead. My childhood friend, Lavinia McGreevy, lost both legs in the explosion. The Ulster Volunteer Force, a loyalist paramilitary organization, claimed responsibility.

19. Throughout ethe years our family has continued to be the object of loyalist and security force attention.

20. In November 1983, Maureen was acquitted of the murder of a British soldier after trial in a special non-jury Diplock court. Such courts exist to try political offenders; common criminals are tried in the ordinary crown courts where they are entitled to a jury trial and other protections denied those tried in a Diplock court. Prior to trial Maureen had been held for 18 months without bail.

21. After her acquittal on the ground of lack of evidence and her subsequent reelase, soldiers would make threatening remarks to Maureen, and they continue to do so.

22. We have lived in our home on Upper Meadow Street since 1983. During that period our house has been entered and searched four times by the security forces. No arrests have ever been made. The house search which occurred in approximately June 1985 was typical. It was conducted by four RUC policemen and one RUC policewoman, who arrived early in the morning. They searched all the rooms in the house, lifted mattresses, searched all the wardrobes and drawers, removing clothing and other contents, took everything out of the storage room which

encloses the water tank, and inspected my grandson's toy chest. Before leaving, they went through Patricia's photo albums and personal letters.

23. In or around July 1985, my daughter Maureen and Anthony (Tony) Hughes, the man with whom she lives, were arrested under section 12 of the Prevention of Terrorism Act, which permits detention for a period of up to seven days. Maureen and Tony were in a taxi when they were arrested; they had been headed into the City Centre, where Tony intended to get a haircut. The police left Sean, Maureen's then 8-year-old son, alone in the back seat of the taxi. They took Maureen and Tony to Castlereagh RUC Interrogation Center. Both were held for seven days before each was released without charge. During the course of his interrogation, threats were made to Tony to the effect that unless he agreed to work for them as an informer, the police would set him up for shooting by the loyalists and that the SAS (Special Air Service) would be sent to "take him out" at the first opportunity. Maureen, who was pregnant at the time, was subjected to verbal abuse and physical threats. In addition, the interrogators mentioned her brother Joseph to her several times, saying that the SAS was still very interested in getting their hands on him. The SAS is a specially-trained, counter-insurgency unit of the British Army, members of which are known to operate in plain-clothes in Northern Ireland.

24. Maureen has since been detained twice by the RUC. Each time she was held for several days, interrogated, and released. Each time she was subjected to verbal abuse and physical threats. Each time the interrogators talked about her brother Joseph and what would be done to him upon his return.

25. On March 26, 1986. Tony was again arrested by the RUC. He was subsequently released. As usual, he was not charged.

26. A short time later Tony was again arrested by the RUC while in a local community centre. He was again

held for a period of days, interrogated, and subsequently released without charge. During this time, he was again threatened and told he was a marked man. Upon his release, Maureen and Tony, convinced that they and their children are in serious danger, either from the security forces or from the loyalists, took steps to fortify their home, including installing bullet-proof glass, drop bars, and gates.

27. On or around July 1, 1986, Maureen's and Tony's house was entered by the security forces in the early hours of the morning. The house was ransacked during the search. When the police left, they took with them the transcript of Joseph's testimony before the court in the extradition proceeding in America. They also took Tony. He was again held for a period of seven days, interrogated, and released without charge.

28. A short time later, Maureen, Tony, and the children were in their home, and the door was kicked in. British soldiers entered and conducted a house search. Nothing was taken. The manner in which the soldiers entered, however, suggested that they were aware of the positioning of the security devices previously installed.

29. Tony's next arrest occurred just before Christmas. He was taken from their home. He was held for a period of three days, interrogated, and released without charge.

31. In September 1987, Tony was arrested again while out with Aisling, his and Maureen's infant daughter. Tony and the infant were taken in, Tony and the infant were held for several hours, and eventually Tony was released without charge. While in the station, he was told that a man had been arrested for conspiracy to assassinate him.

32. Shortly thereafter radio and television news reports stated that a man by the name of Robert Spence had been accused of conspiracy to murder Tony. Spence was also charged with being a member of the Ulster Volunteer Force, a loyalist paramilitary organization. I

have affixed a newspaper account pertaining to the loyalist conspiracy to assassinate Tony. (Exhibit 3).

33. On or around November 23, 1987, a Monday, Tony was again arrested. He was taken from their home. He was held for a period of 48 hours, interrogated, and released without charge.

34. On or around the following Friday, the home of Sharon McCann, our second youngest daughter, was raided by the gardai or Irish police. Sharon moved some years from the New Lodge and lives with her husband and children in Tralee, Co. Kerry. Sharon was home alone with three of their four young children, her husband Adrian having just left for work and to drop their oldest child at school. The police conducted a search of the house. No one was arrested; no charges have been lodged.

35. Paul McAllister, the husband of my eldest daughter, Anne, was arrested approximately five weeks ago. His car was taken, and when he subsequently went to the authorities to report that fact, he was arrested, charged with withholding information, and detained for seven days. While detained, the police made abusive remarks to him about his brother-in-law, my son Joseph.

36. In addition to these specific incidents involving my family, random persecution of Catholics simply on the basis of our religion is common in North Belfast.

37. I have affixed to this affidavit as Exhibit 4 newspaper cuttings from local newspapers which report just some of these incidents of violence directed against north Belfast Catholics.

38. Belfast itself is not that large a city, having a population of only about 350,000, and the area known as north Belfast is quite small. In the space of less than two years, a very incomplete account of episodes of sectarian violence as against Catholics in the area would include:

(1) Leo Scullion of Ligoniel, North Belfast. Bound hand and foot and shot in the head. Killed. January 1986. I had met Mr. Scullion on one or another occasion although I did not know him well.

(2) Martin Quinn from Bawnmore, north Belfast. Shot at point blank range in his bed. Killed. January 1986.

(3) John O'Neill from Ligoniel, north Belfast. Beaten to death. March 1986.

(4) Artie and Vivian Osborne, north Belfast. Burnt out of their home. April 1986. The cutting describing their plight contains the following paragraphs on the New Lodge, the district in which we live:

Sinn Fein issued statements last month warning residents of the New Lodge estate in north Belfast to be on their guard.

"There is a very real danger that we are facing a situation far more dangerous than 1969 or 1974 and we should make preparations now," they said.

They called for people with medical knowledge to come forward to the advice centre and anyone with a van or lorry to make themselves known.

(5) Margaret and Gerry Caulfield from Kilcoole Gardens, Ballysillan, north Belfast. Mrs. Caulfield, a Protestant married to a Catholic, was shot and killed as she lay in bed. Mr. Caulfield, to whom she had been married for two weeks, was wounded. May 1986. Mr. Caulfield was known to us through his first wife, whose father worked on the docks with my husband.

(6) Colm McCallan of Ligoniel, north Belfast. Shot in the head outside his home. Killed. July 1986.

(7) Police in full riot gear fire plastic bullets to drive back mob trying to force their way into Catholic homes. Manor Street, Roe Street, north Belfast. July 1986. (Our own area, New Lodge, was badly hit around the same time by loyalists from the Tiger

Bay district. A lot of Catholics' homes were wrecked on Duncairn Gardens, also some brand new houses on Hillman Street, the next street to ours going towards Duncairn Gardens. Rioting went on through the night and for several nights after. My husband and I took turns sitting up throughout the night just in case some sort of missile were again to come through the window, as happened in 1974. Barricades were put up by neighborhood residents in an effort to protect us from attack.)

(8) Michael and Margaret Reeves, Roe Street, north Belfast. Abandoned their home after loyalists tried to force their way in in broad daylight. July 1986.

(9) Martin Duffy, Manor Street, north Belfast. Shot to death. July 1986.

(10) 18-year-old Catholic youth chased and slashed by a group of loyalists, north Belfast. August 1986.

(11) John Logan, New Lodge, north Belfast. Struck on the head with a pistol. August 1986. Mr. Logan's brother is known to me.

(12) Hugh Gault, Alliance Avenue, north Belfast. Shot in the neck and leg. August 1986. A few days earlier the home of Mr. and Mrs. Gault was petrol-bombed.

(13) Raymond Mooney of Ardoyne, north Belfast. Shot four times in the back. Killed. September 1986.

(14) Edward Campbell of Ardoyne, north Belfast. Found murdered. Ulster Freedom Fighters, a loyalist paramilitary organization, admitted responsibility. July 1987.

(15) Young man from the New Lodge, north Belfast, shot dead while driving. September 1987.

(16) Five Catholic youths shot from passing car on the Antrim Road, north Belfast. (The article notes

that when shot they were "close to the Catholic New Lodge area and the gunmen would have known that youths in the area would be Catholics. The stretch of road saw frequent sectarian attacks on Catholics during the '70s.") November 1987.

(17) Samuel Morrison of Ardoyne, north Belfast. Shot and seriously wounded when answered knock at door of his home. November 1987.

39. In addition to the above incidents, Lawrence Marley of Ardoyne, north Belfast, was shot dead on April 2, 1987, when shots were fired through the door of his home by the Ulster Volunteer Force, a loyalist paramilitary organization. Joseph knew Larry, as did Maureen and Tony, and on the night of the attack, Tony ran to the Marley house, a short distance away from Maureen's and Tony's, after hearing the shots. He arrived to find Larry dying.

40. An additional danger to those believed to be Irish republicans is that they die at the hands of British soldiers and RUC policemen with a degree of regularity that caused Amnesty International to complain that the British authorities' methods

> of investigating police conduct "have not produced sufficient evidence and clarification to eliminate the possibility that unlawful use of force has been used by the security forces to kill people deliberately."

See The New York Times, Sept. 30, 1986, p. A12, cols. 1-2 (Exhibit 5 hereto). Amnesty International's 1987 Report reiterates its concern not only in this regard but also as to the fairness of judicial procedures in the Diplock Courts and to allegations of ill-treatment of persons arrested under the emergency legislation enacted by the Westminster Parliament. The Amnesty International Report 1987 section on the United Kingdom is appended hereto as Exhibit 6. Joseph, Maureen, and Tony have, in each and every instance, been arrested pursuant to the emergency legislation.

41. Many suspected to be victims of the shoot-to-kill policy were, like Joseph and Tony, young men known to hold nationalist or republican political views.

42. Since his earliest teenaged years, Joseph has been known to hold such views. Since his earliest teenaged years, he has been subjected to regular arrests, threats, beatings, and detentions both by the RUC and by the British Army, culminating in his internment without charges and without trial at age 17.

43. As a result of the British government's lack of success in obtaining Joseph's extradition, his case has been the subject of considerable media attention in the United Kingdom. Were he to be returned to the United Kingdom at this time, there is every reason to believe, based on his specific history and that of his family and on the generally hazardous existence of north Belfast Catholics, that he would be subject to persecution on the basis of his religion and on the basis of his political beliefs.

44. The likelihood of such persecution would be enhanced were he to be returned pursuant to the newly effective Extradition Act, implemented in Ireland December 1, 1987.

45. Loyalists have long sought the extradition of Irish republicans and if Joseph Doherty is returned from Ireland to the United Kingdom in the wake of the implementation of the Act, the heightened atmosphere will insure his serious persecution by those who have sought his return unsuccessfully and for so long.

/s/ Mary Maureen Doherty
MARY (MAUREEN) DOHERTY

SUBSCRIBED and SWORN TO before me this 2d day of December, 1987.

/s/ Lynn R. Stockhamer
Notary Public

[redacted] INTERNMENT ORDER

WHEREAS it appears to me, on the recommendation of the Chief Constable of the Royal Ulster Constabulary, that for securing the preservation of the peace and the maintenance of order in Northern Ireland, it is expedient that

[redacted]

who is suspected of having acted or being about to act in a manner prejudicial to the preservation of the peace and the maintenance of order in Northern Ireland, should be interned.

NOW I, THE RIGHT HONOURABLE BRIAN FAULKNER, Minister of Home Affairs for Northern Ireland, by virtue of the powers vested in me by the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, and the Regulations made thereunder and of all other powers me thereunto enabling, DO HEREBY ORDER the said

[redacted]

forthwith to be interned in

and to be subject to all the rule and restrictions applicable to persons there interned, and to be kept interned there until further order.

If the said [redacted]

desires to make any representations against this Order of Internment [redacted] of this Order is served on him, hand in a representation in writing to the official in charge where he [redacted] official shall forthwith forward such [redacted] the Advisory Committee specially appointed for the [redacted] 12 of the said Regulations, which is presided [redacted] holds high judicial office, or is a [redacted] practising barrister of at least [redacted] of such representations.

[redacted] 1972.

BRIAN FAULKNER

MINISTER OF HOME AFFAIRS
FOR NORTHERN IRELAND

BEST AVAILABLE COPY

**LETTER FROM MARY BORESZ PIKE,
COUNSEL FOR RESPONDENT,
TO DAVID L. MILHOLLAN,
CHAIRMAN, BOARD OF IMMIGRATION APPEALS
(dated December 3, 1987)**

SOMERSTEIN & PIKE
Attorneys at Law
401 Broadway
27th Floor
New York, New York 10013

(212) 925-3232

December 3, 1987

By Express Mail

David L. Milhollan, Chairman
United States Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
5203 Leesburg Pike, Suite 1609
Falls Church, Virginia

Re: In the Matter of Joseph Patrick Thomas Doherty,
A26 185 231 (NYC)

Dear Mr. Milhollan:

Please find enclosed a copy of Respondent's Motion to Reopen or to Reconsider, accompanied by the supporting affidavits of Mary (Maureen) Doherty and myself and the exhibits to each affidavit. The original was today lodged with the appropriate Service officer here in New York as per 8 C.F.R. 3.8(b), the underlying proceedings having been conducted here. Mr. Blackman, counsel for the Service, was personally served with a copy of the motion as well.

Mr. Blackman subsequently telephoned my office this afternoon to confirm that the District Director will convey our motion to the Board. I have no doubt that this will be promptly done.

It is our position that Mr. Doherty's motion is properly before the Board for decision, as opposed to the Attorney General.

I have also enclosed a copy of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987. It was received from Dublin only today, and upon receiving it, I have determined that the copy which was earlier obtained from the British Information Service and which appears as Exhibit 3 to my affidavit is not the current version of the Act. There are no significant differences between the two, however, and the sole differences of any stripe are that the Extradition Act, 1987 contains a Section (7) amending Section 4 of the Extradition Act, 1965 and, further, Section 13 of the 1987 Act states the actual operative date, i.e., December 1, 1987, while the Extradition Act, 1986 states the bypassed date of June 1, 1987 (Section 12).

I call these discrepancies to your attention in order to eliminate any cause for confusion in the record. To that end, I will of course also provide the Extradition Act, 1987 to Mr. Blackman. Exhibit 3 to my affidavit will therefore correctly be understood to be the Extradition (European Convention on the Suppression of Terrorism) Act, 1987, as opposed to the Extradition (European Convention on the Suppression of Terrorism) Act, 1986.

As you are aware, the record of the proceedings in this matter was conveyed to the Attorney General for review on May 29, 1987, under cover of a memorandum from you. Please be advised that I have until January 8, 1988, to file a brief with the Attorney General on behalf of Mr. Doherty. We of course will be doing so.

Thank you for your assistance in this matter.

Very truly yours,

/s/ Mary Boresz Pike
MARY BORESZ PIKE
Attorney for Respondent
Joseph Patrick Thomas Doherty

REPUBLIC OF IRELAND
EXTRADITION (EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM) ACT, 1987

Number 1 *of* 1987

EXTRADITION (EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM) ACT, 1987

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Convention countries.
3. Certain offenses not to be regarded as political offences.
4. Certain other offences not to be regarded as political offences in certain circumstances.
5. Jurisdiction in respect to certain offences committed outside the State.
6. Proceedings by virtue of *section* 5.
7. Amendment of section 4 of Act of 1965.
8. Amendment of section 44 of Act of 1965.
9. Amendment of section 50 of Act of 1965.
10. Power to apply provisions of Act to non-convention countries.
11. Saving.
12. Short title, collective citation and construction.
13. Commencement.

ACTS REFERRED TO

Criminal Law (Jurisdiction) Act, 1976	1976, No. 14
Explosive Substances Act, 1883	1883, c. 3
Extradition Act, 1870	1870, c. 52
Extradition Act, 1873	1873, c. 60
Extradition Act, 1965	1965, c. 17

EXTRADITION (EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM) ACT, 1987

AN ACT TO GIVE EFFECT TO THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM, DONE AT STRASBOURG ON THE 27th DAY OF JANUARY, 1977, AND TO AMEND AND EXTEND THE EXTRADITION ACT, 1965. [21*st January*, 1987]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

"the Act of 1965" means the Extradition Act, 1965;

"convention country" means a country other than the State for the time being standing designated in an order under *section 2;*

"the Minister" means the Minister for Justice;

"serious offence" means an offence which, if the act constituting the offence took place in the State, would be an offence for which a person aged 21 years or over, of full capacity and not previously convicted may be punished by imprisonment for a term of 5 years or by a more severe penalty.

(2) References in this Act to an act include references to an omission and references to the doing of an act include references to the making of an omission.

(3) (*a*) A reference in this Act to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended.

(*b*) A reference in this Act to a subsection, paragraph or subparagraph is a reference to the

subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(4) This Act applies, except where otherwise provided, in relation to an offence whether committed or alleged to have been committed before or after the passing of this Act.

2.—(1) The Minister for Foreign Affairs may by order designate the countries which are parties to the European Convention on the Suppression of Terrorism, done at Strasbourg on the 27th day of January, 1977.

(2) The Minister for Foreign Affairs may by order amend or revoke an order under this section including an order under this subsection.

(3) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

3.—(1) For the purposes mentioned in *subsection (2)*—

(*a*) no offence to which this section applies and of which a person is accused or has been convicted outside the State shall be regarded as a political offense or as an offence connected with a political offence, and

(*b*) no proceedings outside the State in respect of an offence to which this section applies shall be regarded as a criminal matter of a political character.

(2) The purposes referred to in *subsection (1)* are—

(*a*) the purposes of Part II of the Act of 1965 in relation to any request for the surrender of a person made after the commencement of this Act by any convention country in relation to which that Part applies;

(*b*) the purposes of Part III of the Act of 1965 in relation to any warrant for the arrest of a person issued after the commencement of this Act in a place in relation to which that Part applies;

(*c*) the purposes of section 24 of the Extradition Act, 1870, and section 5 of the Extradition Act, 1873, in relation to the obtaining of evidence in the State for use in criminal proceedings instituted in a convention country after the commencement of this Act.

(3) (*a*) This section applies to—

(i) an offence within the scope of the Convention for the suppression of Unlawful Seizure of Aircraft, done at The Hague on the 16th day of December, 1970.

(ii) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23rd day of September, 1971.

(iii) a serious offence involving an attack against the life, physical integrity or liberty of an internationally protected person,

(iv) an offence involving kidnapping, the taking of a hostage or serious false imprisonment,

(v) an offence involving the use of an explosive or an automatic firearm, if such endangers persons, and

(vi) any offence of attempting to commit any of the foregoing offences.

(*b*) References in this subsection to an offence include references to participation as an accomplice of a person who commits the offence.

(4) For the purposes of *subsection (3)(a)*:

(*a*) in *subparagraph (iii)* thereof, "an internationally protected person" has the meaning assigned to it by *subsection (5)*,

(*b*) in *subparagraph (iv)* thereof—

"an offence involving", in relation to kidnapping, the taking of a hostage or serious false imprisonment, includes any offence committed in the course thereof or in conjunction therewith;

"serious false imprisonment" means any false imprisonment involving danger, or prolonged or substantial hardship or inconvenience, for the person detained,

(*c*) in *subparagraph (v)* thereof—

"automatic firearm" means a firearm which is so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty;

"explosive" means any article manufactured for the purpose of producing a practical effect by explosion or intended by the person using it for that purpose;

"an offence involving", in relation to the use of an explosive or an automatic firearm, includes any offence committed by means of the explosive or firearm.

(5) (*a*) In this section "an international protected person" means, in relation to any such offence as

is mentioned in *subsection (3)(a)(iii)*, any of the following:—

(i) a person who at the time of the commission of the offence is a Head of State, a member of a body which performs the functions of Head of State under the constitution of a state, a head of government or a minister for foreign affairs and is outside the territory of the state in which he holds office,

(ii) a person who at the time of the commission of the offence is a representative or an official of a state or an official or agent of an international organization of an inter-governmental character, is entitled under international law to special protection from attack on his person, freedom or dignity and does not fall within *subparagraph (i)*,

(iii) a person who at the time of the commission of the offence is a member of the family of a person mentioned in *subparagraph (i)* or *(ii)* and—

(I) if the other person is mentioned in *subparagraph (i)*, is accompanying him, or

(H) if the other person is mentioned in *subparagraph (ii)*, is a member of his household.

(*b*) (i) If in any proceedings a question arises as to whether a person was at the relevant time an internationally protected person, a certificate signed by, or by a person authorized by, the Minister for Foreign Affairs and

stating any fact relating to the question shall be evidence of that fact.

(ii) A document purporting to be a certificate described in *subparagraph (i)* shall be deemed to be such a certificate, and to be signed by the person purporting to have signed it (and, in the case of such a document purporting to have been signed by a person authorized by the Minister for Foreign Affairs, to have been signed in accordance with the authorisation), unless the contrary is shown.

4.—(1)*(a)* For the purpose mentioned in *paragraphs (a)* and *(b)* of *section 3(2)*, an offence to which this section applies and of which a person is accused or has been convicted outside the State shall not be regarded as a political offence or as an offence connected with a political offence if the court or the Minister, as the case may be, having taken into due consideration any particularly serious aspects of the offence, including—

(i) that it created a collective danger to the life, physical integrity or liberty of persons,

(ii) that it affected persons foreign to the motives behind it, or

(iii) that cruel or vicious means were used in the commission of the offence,

is of opinion that the offence cannot properly be regarded as a political offence or as an offence connected with a political offence.

(*b*) For the purposes mentioned in *section 3(2)(c)*, proceedings outside the State in

respect of an offence to which this section applies shall not be regarded as a criminal matter of a political character.

(2) (*a*) This section applies to—

(i) any serious offence (other than an offence to which *section 3* applies) of which a person is accused or has been convicted outside the State—

(I) involving an act of violence against the life, physical integrity or liberty of a person, or

(II) involving an act against property if the act created a collective danger for persons,

and

(ii) any offence of attempting to commit any of the foregoing offences.

(*b*) References in this subsection to an offence include references to participation as an accomplice of a person who commits the offence.

5.—(1) If a person, whether an Irish citizen or not, does in a convention country an act which—

(*a*) if he had done it in the State, would have constituted an offence, and

(*b*) falls within the description of any of the offences referred to in *subparagraph (iii)*, *(iv)*, or *(v)* of *section 3(3)(a)*,

or attempts in a convention country to do any such act, he shall be guilty of the offence which the act or attempt would have constituted if he had done or made it in the State.

(2) If a person who is a national of a convention country but not an Irish citizen does outside the State and that convention country an act which—

(*a*) constitutes an offence under the law of that convention country,

(*b*) If he had been an Irish citizen, would have constituted the offence of murder or manslaughter or an offence under section 2 or 3 of the Explosive Substances Act, 1883 (as substituted by section 4 of the Criminal Law (Jurisdiction) Act, 1976), and

(*c*) falls within the description of any of the offences referred to in *subparagraph (iii)*, *(iv)* or *(v)* of *section 3(3)(a)*,

he shall be guilty of the offence which the act would have constituted if he had been an Irish citizen.

(3) (*a*) For the purposes of this section, any act done on board a ship, aircraft or hovercraft, when it is in or over the territory of a convention country, shall be treated as done in that country and any act done on board a ship, aircraft or hovercraft registered in a convention country shall be treated as done in that country and in the convention country (if any) in or over whose territory it is done.

(*b*) In *paragraph (a)* "territory" includes territorial seas.

(4) The provisions of the law of the State applied by virtue of this section to things done in any other country shall be read for the purposes of this Act with any necessary modifications.

(5) This section shall apply only to acts done after the commencement of this Act.

6.—(1) Proceedings for an offence which is an offence by virtue of *section 5* may be taken in any place in the

State and the offence may for all incidental purposes be treated as having been committed in that place.

(2) Where a person is charged with an offence referred to in *subsection (1)*, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

(3) The Director of Public Prosecutions shall not take, or consent to the taking of, further proceedings such as are mentioned in *subsection (2)* in respect of an offence unless it appears to him that—

(a) a convention country in relation to which Part II of the Act of 1965 applies has made a request under that Part for the surrender of the person concerned for the purpose of trying him for an offence in respect of the act in question and the request has been finally refused (whether as the result of a decision of a court or otherwise), or

(b) a warrant has been issued by a judicial authority in a place in relation to which Part III of the Act of 1965 applies for the arrest of the person concerned for the purpose of trying him for an offence in respect of the act in question and it has been finally determined (whether as the result of a decision of a court or otherwise) that the warrant should not be endorsed for execution in the State under that Part or that the person concerned should not be delivered up in accordance with the warrant, or

(c) because of special circumstances (which may include the likelihood of a refusal such as is mentioned in *paragraph (a)* or of a determination such as is mentioned in *paragraph (b)*) it is expedient that proceedings should be taken against the person concerned for an offence under the law of the State in respect of the act in question.

(4) If a person would, but for this subsection, be required on conviction of an offence referred to in *subsection (1)* to be sentenced to death, he shall be sentenced to imprisonment for life.

(5) No proceedings shall be taken—

(a) under this section in respect of an act that constitutes an offence referred to in *subsection (1)* and also an offence under section 2 of the Criminal Law (Jurisdiction) Act, 1976, or

(b) under section 38 of the Act of 1965 in respect of an act that constitutes an offence by virtue of that section and also an offence referred to in *subsection (1)*.

7.—The following section is hereby substituted for section 4 of the Act of 1965:

4.—A draft of any order proposed to be made by the Government under this Act after the commencement of the *Extradition (European Convention on the Suppression of Terrorism) Act, 1987*, shall be laid before each House of the Oireachtas and the order shall not be made until a motion approving of the draft has been passed by each such House.".

8.—Section 44 of the Act of 1965 (which specifies circumstances in which a warrant issued in a place in relation to which Part III of that Act applies shall not be endorsed for execution in the State) is hereby amended by the substitution in subsection (2) for the words from the end of paragraph (*c*) to the end of the subsection of:

"or that there are substantial grounds for believing that—

(i) the person named or described in the warrant will, if removed from the State under this Part, be prosecuted or detained for a political offence or an offence connected with

a political offence or an offence under military law which is not an offence under ordinary criminal law, or

(ii) the warrant was in fact issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinion or that his position would be prejudiced for any of these reasons.".

9.—Section 50 of the Act of 1965 (which specifies circumstances in which a person arrested under Part III of that Act shall be released) is hereby amended by the insertion in subsection (2) after paragraph (*b*) of the following paragraph:

"(*bb*) there are substantial grounds for believing that the warrant was in fact issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinion or that his position would be prejudiced for any of these reasons, or".

10.—(1) The Government may by order direct that all or any of the provisions of this Act which would, apart from this section, apply only in relation to convention countries shall apply (subject to such exceptions, if any, as may be specified in the order) in relation to any country which is not a convention country and with which there is in force an extradition agreement (within the meaning of the Act of 1965) as they apply in relation to a convention country.

(2) The Government may by order amend or revoke an order under this section including an order under this subsection.

(3) A draft of any order proposed to be made under this section shall be laid before each House of the Oireachtas and the order shall not be made until a motion approving of the draft has been passed by each such House.

11.—Nothing in this Act shall prevent—

(*a*) an offence from being regarded as not being a political offence or as an offence connected with a political offence, or

(*b*) proceedings for an offence from being regarded as not being a criminal matter of a political character,

for the purposes mentioned in *subsection (2)* of *section 3* in circumstances or by reason of considerations other than those referred to in that section or *section 4*.

12.—(1) This Act may be cited as the Extradition (European Convention on the Suppression of Terrorism) Act, 1987.

(2) The Act of 1965 and this Act may be cited together as the Extradition Acts, 1965 and 1987.

(3) The Act of 1965 and this Act shall be construed together as one.

13.—(1) Subject to *subsections (2)* and *(3)*, this Act shall come into operation on the 1st day of December, 1987.

(2) If, after the passing of this Act but before the 1st day of December, 1987, a resolution is passed by each House of the Oireachtas declaring that this Act should come into operation on a specified day before that date, the Minister shall make an order appointing the day so specified as the day on which this Act shall come into operation and this Act shall come into operation accordingly.

(3) (*a*) If, after the passing of this Act but before the 1st day of December, 1987, a resolution is passed by each House of the Oireachtas declaring that this Act should not come into operation on the 1st day of December, 1987, this Act shall not come into operation on the 1st day of December, 1987.

(*b*) If——

(i) a resolution passed by each House of the Oireachtas under *paragraph (a)* declares that this Act should come into operation on a specified day, or

(ii) a resolution is passed by each House at any time after the passing of a resolution by each such House under *paragraph (a)* (being a resolution that does not contain such a declaration as is specified in *sub-paragraph (i)*) declaring that this Act should come into operation on a specified day,

the Minister shall make an order appointing the day so specified as the day on which this Act shall come into operation and this Act shall come into operation accordingly.

TRANSCRIPT OF HEARING
(April 2, 1984)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE JOSEPH PATRICK DOHERTY

April 2, 1984
10:50 a.m.

[TESTIMONY OF RESPONDENT]

[624] (Hearing resumed)

THE COURT: Is everybody here?

MR. SOMERSTEIN: Yes, your Honor.

THE COURT: You may proceed.

MS. PIKE: Good morning, Your Honor.

We call as our witness this morning the respondent, Joseph Patrick Doherty.

JOSEPH PATRICK DOHERTY,

called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PIKE:

Good morning, Joe.

A. Good morning.

Q. Will you remember, please, to speak slowly and to keep your voice up.

[625] A. I will.

Q. Would you state your address, please?
A. Metropolitan Correctional Center, New York, New York.
Q. What's your date of birth?
A. The 20th of January, 1955.
Q. How old are you at present?
A. 29 years of age.
Q. Where were you born?
A. I was born in the City of Belfast.
Q. Of what country are you a citizen?
A. I am a citizen of Ireland.
Q. Have you ever been married?
A. No.
Q. Where did you live while growing up, Mr. Doherty?
A. I lived in the City of Belfast.
Q. With whom did you live?
A. With my parents.
Q. Do you have any brothers or sisters?
A. I have got no brothers, but I have four sisters who are all younger than myself.
Q. Where is your family now?
A. They are all back home, except for one sister who came over for the trial.
Q. Directing your attention to June of 1981, were [626] you living in Belfast at that time?
A. Yes, I was.
Q. On June 10 of 1981, Mr. Doherty, were you a member of any political movement?
A. Yes, I was a member of what's known as the republican movement.
Q. What is the republican movement, Mr. Doherty?
A. The republican movement is an embodiment of several movements or several organizations; namely, the Irish Republican Army, which is the armed force at present fighting the British. There is also the Sinn Fein Party, which is the political party, which compares our actions north and south of Ireland. Also is Na Fianna

Eireann, which is the republican scout movement and the Cumann na Mban, which is the women's organization.
Q. What are the goals of the republican movement?
A. Well, they are pretty basic. It is a declaration of intent of British withdrawal from occupied Ireland, the reunification of Ireland, amnesty for all political prisoners and the setting up of democratic elections in the 32 counties.
Q. To what branch of the republican movement did you belong?
A. I was a volunteer in the Irish Republican Army.
Q. How old were you when you joined the Irish [627] Republican Army?
A. I was 17 years of age. Just turned 17, as a matter of fact.
Q. What circumstances led you at the age of 17 to join the Irish Republican Army?
A. I was just released from the internment camps, and, of course, I was a republican. I believed that the only way forward to peace and stability in the country was for British evacuation of the country. I believed that the only way this could be brought about was by armed conflict, so at the age of 17, after seeing constitutional means, the civil rights movement, etc., that the only way forward for peace was through an armed conflict.
Q. At the time you joined the Irish Republican Army, what was your understanding about what the goals of the IRA were?
A. Well, they were the same goals as myself, as I already explained.
Q. During your years of service with the Irish Republican Army, how if at all did the goals of that organization change?
A. It hasn't changed at all. It is still basically the four demands.
Q. Between the years of 1972 and 1981, approximately how much time did you spend in prison?

[628] A. I spent eight years, give a day or two, of course. Eight years in prison.

Q. Generally speaking, what were your responsibilities as an IRA volunteer during the periods that you were not in prison?

A. Well, of course my responsibilities in the Irish Republican Army was to be a soldier, and the main part of the war engaged the British forces in combat or armed conflict, but of course at that present time the Irish Republican Army had a lot of responsibilities.

We had the responsibility of gathering intelligence, defense of the ghettos and countryside and whatnot, and also social work within the cities and the countryside.

Q. What did the intelligence gathering aspect of your responsibilities include?

A. This was to gather intelligence on the local British forces, her many battalions in the particular part of the city, which regiments as the British Army broke up into different regiments which differ from the United States Army. We have the Queens Regiment, the Commandoes, Paratroopers, Scotch Regiments, etc.

It's very a traditional part of the British Army, so we had to gather, of course, at a very young age, what a colonel was, major, the identification marks on tanks, [629] identification marks on different soldiers, the formation of soldiers, as in foot patrols, which came into the ghettos, because the British Army just don't walk in in five or six, they come in in a combat situation and in a certain formation.

So every volunteer had the responsibility to keep his eye open, to study the British forces or study your enemies.

Q. What was the defensive aspect of your responsibilities as a volunteer?

A. Well, we had an auxiliary unit in each ghetto which was based on a company, battalion and brigade level. This was purely defense, but the operational part of the Irish Republican Army, which I was in, also done

defense work as well. This was during the sectarian strike, when the sectarian assassination gangs were attacking the Catholic ghettos, bombings, shootings, so we were put on 24-hour standbys. This was sitting in houses with weapons waiting on attacks. This goes back to the twenties and whatnot.

Q. You mentioned earlier that you had been imprisoned for eight years, give or take a couple of months.

A. Yes.

Q. What prisons were you confined in during those periods of your imprisonment?

[630] A. I was in the Maidstone Prisonship, which was a prisonship situated in Belfast dock. Long Kesh Concentration Camp and Crumlin Road Prison.

Q. During these periods of imprisonment, Mr. Doherty, what effect did they have on your status as a volunteer in the Irish Republican Army?

A. It didn't change the status at all. As we recognize IRA volunteers in the prison, they are still combatants, they still carry on the war. They do not lose their status as an Irish Republican Army volunteer.

Q. I would like to direct your attention particularly to May 2, 1980. Were you on that date assigned to a particular unit of the Irish Republican Army?

A. Yes, I was.

Q. To what unit were you assigned?

A. I was sent to an active service unit of the Belfast Brigade.

Q. What is an active service unit?

A. An active service unit—now we are taking 1982, which is different from years ago where the Army came in to some sort of a change. The active service unit is only a section of the Irish Republican Army.

We have other sections. We have the defense section, which is called the administration, which is the main body of the Irish Republican Army. They deal with [631] social work, police work and defense of the district, and then the brigade is broken up into certain units, intelli-

gence units whose specific job is to gather intelligence. This is again watching troops, troop movements, homing in on British airways ways, the airways, trying to break British codes, etc.

We have an internal security, which is specific units which deal with courts martial, similar to the military in the United States Army and the British Army. We have the engineering units, which specifically deal with the economic war, and then lastly myself, the active service units. You could call us the infantry.

Q. In your capacity as a volunteer assigned to an active service unit, did you have occasion to be engaged in an operation on May 2 of 1980?

A. Yes, I was.

Q. What was the nature of this particular operation?

A. It was to engage and attack a British military convoy.

Q. What are the purposes of an operation of this type?

A. Well, there is a two-fold, really. One is military and the other one, of course, is political.

Q. Let me separate them so we remain clear. What are the military objectives that the Irish Republican Army [632] seeks to accomplish through an operation of this type?

A. Well, being a soldier myself of ten, twelve years, I have had plenty of experience to come up against the British Armed Forces, so you could say I am pretty experienced on what the British Army role is.

The British Army role in the north of Ireland, as I see it, is a combat role. What I mean by this, they don't come into the ghettos and the countryside in one or two-man foot patrols. They come in in a military formation. This formation, as typical, they have a nerve center or center patrol of an eightman foot patrol. These eightman foot patrols have usually flanks and a rear guard with another flank.

There is usually an armored car backup. This is with the APCs. That is armored personnel carriers. They also have flight control, which is troop helicopters, which usually fly around the place to give them support.

So the purpose of an operation like this is to break up this formation or to spread it out more. It is a part of the guerrilla war tactic.

So this type of ambush, along with mortar attacks on British military bases, rockets and bazooka attacks on their tanks, firing on their helicopters, etc., it is sort of to spread the military more, and this is just one of these parts of the operation, and of course to [633] inflict as many casualties as possible. This brings harm to British troop morale in the combat zone.

Q. You mentioned also that there were political objectives that the IRA sought to accomplish of this type. What are those political objectives?

A. Of course, but by us inflicting as many casualties as possible, it will bring great harm to British troop morale. This, of course, starts a chain reaction back to the British government and back to the British population as a whole, as reports, government reports and reports on the television and whatnot indicate that the recruitment in the British Armed Forces is somewhat dropped in the last ten, twelve years, of course due to the situation in the north of Ireland with the war on.

Similarly, most of all these young lads from Birmingham, London and Glasgow, they feel the war in the north of Ireland is not justified and they shouldn't be there, or on the other hand they don't want to go into a war situation which they don't understand. They don't understand the conflict of the period, false patriotism or duty to their country, and when most all those young lads joined the British Army they usually want to go to Germany on standby and they usually want a guarantee that they won't be sent to the north of Ireland, which of course I can't blame them, you know.

[634] So—and also when you take—there was a census taken on the general population regarding the north of Ireland, and the general population, a majority of the vote says that they want the troops home. They want some sort of solution in Ireland which the Irish can deal with themselves, and this puts a lot of pressure on the British government.

So if you take a small operation like this, just ambushing troops and so much of a chain reaction, especially when soldiers come back and give the story to their people about combat duty, their friends are maybe injured or killed, so it is sort of a chain reaction going to the government, and the Document 37 report by General Clover, he stated there himself that he couldn't beat the IRA on their ground. He stated for the next five years we cannot beat the IRA.

Well, I can maybe talk personally and maybe talk on behalf of the Irish Republic Army that we can not actually beat the British Army on the grounds, if it is too large an army, the most modern, most disciplined, the best equipped army in the world, so we can't exactly push the British out to sea, so we have to revert to guerrilla tactics because we are a small army, we are a very small country, we haven't much terrain to work with, so we have to revert to urban guerrilla war in the cities and [635] guerrilla war on the border.

So it's an ambush or mortar attack puts a lot of pressure on the Army which sends a chain reaction to the British government to bring about a negotiation and a final solution to the problems in the north of Ireland.

[636] Q. What was your general purpose in participating in this mission on May 2, 1980?

A. To further the war effort, of course.

Q. Where was this operation to take place, Mr. Doherty?

A. It was to take place in the north of Belfast on the Antrim Road, which is one of the main arteries in

the city. It was to take place exactly on the Antrim Road, the [redacted]junction of Cavehill Road.

Q. This is in the City of Belfast?

A. Oh, yes, of course, right.

Q. Why had that particular location been selected?

A. Well, the Antrim Road which is in North Belfast, ongoing northwards on the Antrim Road about I'd say half a mile we have Dunmore Barracks. This is a very large army installation. I am not too sure whether it is a battalion or maybe two battalions of troops.

Going southwards on the road we have another army camp which is called Girdwood Barracks. Girdwood Barracks, this is again I think up to one battalion of British troops.

So, of course, when you have two very large camps, you have communications vehicles, you have army patrols, food trucks, you have constant army convoys going between the two barracks.

[637] Q. Were other volunteers participating on this operation with you?

A. Yes, there was.

Q. Where were you and the other volunteers who were participating on the operation to be located relative to the injunction that you first finished describing?

A. Well, again, as I explained before, through the intelligence operations we found that there was traffic lights at the junction of the Cavehill Road and the Antrim Road, so the best place for attack was to take a house on the righthand side at the junction going north.

Q. How did you happen to pick the particular house that you came to be located in?

A. Again, I wasn't personally involved. We just got communications from the intelligence unit that there was a three-bedroom—a three-apartment building, and the report we got was that the second and third floor was vacant, and the bottom floor, the first floor, had tenants living there.

Q. What did you and the other volunteers do upon arriving at 371 Antrim Road?

A. Well, there was two volunteers sent 'round to the house. The two volunteers approached the house and there was a lady came to the door.

The volunteers expressed to the lady that they [638] were members of the Irish Republican Army and they wished to take the house over. They guaranteed the lady that they—that she was not the purpose of the operation, that we needed to get to the second and third floor.

She seemed a bit nervous, of course, but we gave her a guarantee that no harm would come to her.

So the other volunteer told them to go back into their own apartments and out of harm's way, told them to sit and relax, and there was a volunteer left to sort of keep an eye on them to make sure they don't stray about the house, and whatnot.

Myself and two other volunteers went to the second floor and secured the second floor. We checked the second and third floor and there was no persons at all in the house.

Q. What did you do at that point, Mr. Doherty?

A. Well, of course, we went about to get our weapons ready and get sort of a briefing from the operations officer, who was Volunteer Robert Campbell. He was one of the men on the scene. He was the operations officer. He was the commanding officer, you could say.

We went about to get the weapons ready and to wait on the targets.

Q. After you took up your position and began to wait on the targets, what happened?

[639] A. Well, after I think about three or four hours, maybe, something very strange happened. We noticed that there was no British convoys coming down the road. It was very, very strange that there was no convoys coming down.

So the officer in command, Campbell, reckoned that there was something strange and we could be set up, or something. So he says, well, maybe we should pull out.

And just about as we were to pull out, within that 15 minutes, this is when the shooting started.

Q. What happened to start the shooting right before you had decided to pull out?

A. Well, all the volunteers on the scene—there was three volunteers up the stairs, there was myself, Volunteer Robert Campbell, and Volunteer Angelo Fusco. The volunteer down the stairs was Volunteer Paul McGee.

Volunteer Fusco noticed that the traffic had seemed to slow down or come to a stop, while I noticed straight away that, this being a very busy road, there was something up.

So the next thing was a car approached the house. I didn't exactly see where the car came from, but when I looked out, I seen the car just pull to a stop on the outside of the house. As we were on the second floor, we were looking down, the car stopped. When the car stopped, it came to a very sudden stop and five men got out of the [640] car.

Q. When these five men got out of the car, what if anything did you observe about them?

A. The five men were dressed in civilian clothing. They were carrying machine guns. We thought they were Uzi machine guns, which is an Israeli assault weapon. It is very easy to conceal, and whatnot. One of them was carrying a sledge hammer in his hand and they were all wearing orange arm bands around their arms.

Q. When these five men got out of the car, what did they do?

A. Well, when they got out of the car they were in the position where they were attacking the house where we were in. They were in this position here coming towards the house. There was a number of shots fired and, of course, in that split second we fired back.

Q. In those split seconds after the arrival of these five men on the scene, what if any conclusions did you draw as to the identity of these men?

A. Well, we knew straight away that they were members of the Special Services or members of the MRF, which is the Military Reaction Force. This is units of the British armed forces.

Q. What did you base this conclusion on?

A. Well, the type of assault, and this is not the [641] procedure of the regular army because the regular—they were out of uniform, they were in civilian dress. The arm band was very, very important.

THE COURT: Why was the arm band important?

THE WITNESS: Because through our intelligence we found that the SAS operate and when they operate they wear an orange arm band. This is to identify themselves with the regular troops. In case the regular troops come on the scene and seeing all these civilians running about, the ones with the orange arm bands are friends. If you haven't got an orange arm band on, naturally you would be the other side. This was to identify themselves because, of course, in a gun battle things move so fast, especially the color—as you know, people who go out at night on bicycles wear this very identifying color.

THE COURT: Does the IRA ever use the orange arm bands in an attempt to decoy the British?

THE WITNESS: No. This sort of intelligence come out two or three months before that. This was on another operation, or the IRA had surveillance on the British army and seen these people wearing the arm bands. So of course it went up the chain of command and it come right down to us.

No, because every four or five weeks we get a briefing on tactics of the British Army, and it was at one [642] of the briefings I was told the SAS wore orange arm bands and, of course, the types of weapons they have and their tactics, and whatnot.

Q. Mr. Doherty, apart from having determined in your own mind that these men were SAS and British soldiers, what if anything other than that did you know about any of these five men at that point in time?

A. I didn't know anything about them, their names or nothing.

Q. To your knowledge, had you ever seen any of these men before?

A. Oh, no, no.

Q. Did you have any knowledge of who any of them were, apart from the fact that they were British soldiers?

A. No. I didn't know them at all.

Q. You described that when they arrived the shooting started. Would you describe more particularly what happended when the five men arrived at 371 Antrim Road and the shooting started?

A. They jumped out of the car. They started shooting. The officer in command, Volunteer Campbell, says "let's get the hell out of here," he said, so we tried to get down the stairs.

When we are getting down the stairs, the rest of the troops were trying to come in the front door. We went [643] back up the stairs and were trying to get out the back window, and we noticed that there was troops at the back who were wearing the same arm bands and clothes. But we noticed that one of them, which I thought then, had an American M-16 semiautomatic rifle.

We went back up, and the commanding officer Volunteer Campbell told us to take up seats—take up a stand. I was appointed to the back room. Officer Campbell done the front room and Volunteer Fusco done the stairs. We waited for a pending attack. We waited for another attack.

Q. To go back just a little bit, during the course of the initial attack on the house by the British soldiers, was anyone struck during the course of that attack?

A. Yes, there was.

Q. Who, if you know?

A. A British soldier, one of the British soldiers that jumped out of the car seemed to have fallen. He was shot in the attack. He was shot in the initial attack.

Q. Did there come a time when security forces arrived on the scene?

A. Yes. Within ten to fifteen minutes we heard the regular army coming on the scene. This is of course from the drones of the tanks that appeared. They surrounded the block and the blocks that surround the house. They [644] started to get out of the tanks and they came to the building and asked for our surrender.

Q. Approximately how many security forces appeared to arrive on the scene?

A. Oh, Jesus, it must have been about a hundred troops and paramilitary police.

Q. What happened when they requested your surrender?

A. Well, the officer in command, Volunteer Campbell, approached the window and had negotiations with—I am not too sure whether he was a colonel and a lead member of the RUC police. They asked for our surrender, but Campbell says that he wanted a guarantee, he wanted an a priest 'round to the house. The guarantee were to be a witness in case we were assassinated.

The police and the army said they would comply with this, but it would take about 15 minutes.

So there was a bit of chit-chat between that, and later on the priest came to the house. We went down out of the house and surrendered or down to the front door and surrendered to the British Army.

Q. At the time that the army and the other security forces arrived on the scene, what if you know happened to the five SAS officers whom you had seen in the front of the house?

A. Well, the SAS is a covert unit of the British [645] Army, they fall under the Official Secrets Act, so of course they don't stand about to make statements or to

apply warrants. They immediately jumped into the car and drove away from the scene and, of course, the car was part of the evidence because it was full of bullet holes and the tires were let down, so they hobbled away in the car.

Q. After the negotiations with security force member whoever it was that was conducting them were completed, did there come a time when you and the other volunteers left the house?

A. Yes, there was.

Q. What did you see upon leaving the house?

A. Well, we seen all the troops. There was armored personnel carriers, there was jeeps, and whatnot. Behind that there was a very large crowd which seemed to be a nationalist and republican crowd, with neighbors singing and cheering and sort of trying to get our morale up.

Q. What did you do, if anything, upon leaving the house?

A. Well, I put my fist up and I said "up the IRA."

Q. What happened next, Mr. Doherty?

A. We were arrested and taken to Castlereagh Interrogation Center.

Q. Was anyone arrested with you?

A. Yes.

[646] Q. Who?

A. Volunteer Robert Campbell, Volunteer Angelo Fusco and Volunteer Paul McGee.

Q. You stated that you were placed under arrest and taken to Castlereagh Interrogation Center. Where is Castlereagh?

A. It is situated in East Belfast. This is the main interrogating center for that part of the city or for the city as a whole.

Q. What happened to you when you arrived at Castlereagh?

A. When I arrived at the Castlereagh I was put into a cell. The cell was completely all white. The lights was

put on 24 hours a day and I was told that I was to be interrogated the following day.

Q. Were you interrogated?

A. Yes. I was held in Castlereagh Interrogation Center for seven days.

Q. How often over the course of those seven days were you interrogated?

A. I was interrogated three time a day: in the morning, the afternoon and at night.

Q. Approximately how long were these sessions?

A. Usually from one hour to four and a half hours on each session.

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[692] Q. I would like to direct your attention now to the year 1971. Did there come a time when you were taken into custody by the British Army, Mr. Doherty?

A. Yes, there was.

Q. Would you describe how it happened?

A. This was during one what you call the British Army dawn raids. This was around the Christmas period of 1971, about 5 o'clock in the morning. They came to the house. Of course, we have only two bedrooms. Me mother and father slept in one bedroom and me four sisters slept in the bed in the other, so of course me being the odd man out, being the boy, I had to sleep on the floor downstairs.

So about 5 o'clock in the morning I was awoke by the sound of the tanks coming. These were coming every morning, sometimes 4 o'clock, to do certain raids and to pick up suspects as they say.

I heard the tanks coming down the street, so I jumped up and I tried to get up the stairs to warn my father and the door was kicked in. I looked around and it must have been about 14, 15 troops. They had tin helmets, their faces blackened and they had machine guns and rifles.

[693] They told me to halt, freeze or they will shoot. So I put my hands up above my head and went downstairs. They proceeded to go up the stairs and search the bedrooms. I heard them shouting at my mother and father to get out of the bed. My father did get out of bed, but my mother, who was half naked and was very embarrassed at the six or seven British troops in the very small bedroom with rifles pointed at her and told her to get out of the bed.

She of course being embarrassed said "Will you get out of the room so I can put my gown on?" A British Army officer approached her put a name Mueller-Browning to her head and told her "You Irish bitch, get out of bed."

So of course they took her out of bed and they went into the other bedroom where my sisters were. I think they were the ages of 12 to 14. I heard them crying and they were afraid and they took them out of bed. Everybody was brought down the stairs and we were put into the back room. Me and my father was told to keep our hands above our head while they went about to make a rampage in the house, pulled out bread—the only bread we had and threw it on the floor. Just the normal British Army search. They wrecked the house searching for arms they said.

They proceeded to come into the room and told meself and my father that we were being arrested and taken in for questioning. My father and myself were took out and [694] put into one of the many tanks that was there.

Q. Approximately how many tanks were there, Mr. Doherty?

A. Three. Three armored personnel carriers. This carries up to eight troops in each carrier. They are what you call an armored personnel carrier or, as the British call it themselves, pegs.

Q. Pegs?

A. We don't call them pegs. They call them pegs.

We were put into the back of the tank. A British Army officer sat facing me with his gun. We were brought into what's called Glen Ravel Street Police Station, to the British military end of the police station, as the police had one end of the police station and the British Army had the other and they were in control of the ghetto that was surrounding the police station.

We were put into a large gymnasium. There seemed to be 20 or 30 other people. These were neighbors, neighbor's sons, etc., and everybody was sitting around in a circle with their hands above their heads. The British Army was marching in between us. They took each person in for questioning until they came to myself.

When I went into the room there was a table. Behind the table there seemed to be three very high ranking British officers. I think they were majors. There was [695] troops all around the room with their rifles.

I was told to stand in front of the table and I was asked questions, questions like are you a republican? Do you know anybody who is a republican? Do you know who the IRA is? What about your neighbor next door, Mr. Smith, is he in the IRA? What political views has the woman up the street? General questions of gathering information on all the neighbors in the surrounding district.

My father was brought in. He was asked about his trade union, was there republicans in the trade union, who in the trade union belonged to any political party, was there any civil rights people in it, was there any agitators in it. They asked basically about his whole life.

We were questioned for about an hour each and then we were released in the next three hours. It's what they call screening. They bring you in—

Q. After—I'm sorry, are you finished with your answer?

A. Go ahead.

Q. After you were taken into custody and interrogated but prior to your release, were any charges ever brought against you?

A. No.

Q. Were any charges ever brought against your father?

[696] A. No.

Q. Having been released, did there come a time when you again were taken into custody by the British Army?

A. Yes, the very next night at 5 o'clock in the morning.

I wish to point out that we seen this as a harrasment by the British troops. The British troops could have arrested me the following morning because every morning I go to work I was stopped by the police once or twice and they could have took me in. Coming home from work I was stopped once or twice. The actual fact that they had to come in at 5 o'clock in the morning, kicked in the door in such a fashion, we felt very resentful of this, that they should come in in this manner.

They could have knocked the door because we had a knocker on the door and we had a bell and it was very obvious to anybody walking down the street, but the fact they kicked the door and they came in with commandoes running around the room, freeze, get against the wall and shouting at my family, etc.—

Q. What briefly were the precise circumstances of this second encounter on the following morning?

A. It was the exact same as the morning before, only they took me in on my own. I was brought in, brought through the same procedure. The British Army major told me [697] that they knew that I was Na Fianna Eireann. I stated I was a member of Na Fianna Eireann, but under the Geneva convention that's all I can say. Of course, he didn't like that. After a few hours I was released again.

Q. At the time you were released was anything said to you by the officer?

A. Yes, of course. There was only 16 at that particular time. They says, "We'll get you, Doherty, when you are 17."

Q. Did there come a time when they made good on that?

A. Yes.

Q. Describe what happened, if you would.

A. I think it was the day after my 17th birthday or the second day, I am not too sure. I was, of course, on the run. I was staying with my aunts and cousins and uncles. They were hiding me because I did expect to be arrested.

I was going down the street. I was going to mass, as a matter of fact, as it was on a Sunday, and the British Army jumped up from behind a wall and said, "Doherty you are going down for questioning."

They took me down to Glen Ravel Street and when I got there I was met by an intelligence officer of the British Army and a high ranking officer of the British Army. [698] Of course, I was only 17, I was just a young cub, you know.

He grabbed me by the ears, brought me to the calendar and says, "Happy birthday, Joe, you know where you are going."

He told me that I was to be brought to Girdwood Barracks.

Q. What is Girdwood Barracks?

A. It's the notorious torture center which was brought up in the Amnesty International reports.

Q. Were you taken to Girdwood Barracks?

A. Yes, I was.

Q. What happened to you there?

A. I was brought there and held for two days, or I think two and a half days, I am not too sure.

I was given what is known as SD treatment. This is sensory deprivation, only I didn't get as much as the rest

of the people there because I was what they called small fish. I was insignificant.

So I was put in what you could describe as a partition, like a toilet. I was put on a chair and told not to lift my hands off my knees, but I had been told—I would say this was a white wall like a peg board with holes and after about an hour you started getting very, very dizzy as the holes got bigger because you were right up close to the wall, so the holes got bigger and bigger. I [699] wasn't allowed to move and the temperature was kept very high so it was very humid. The police officers in British intelligence were walking behind us. This went on for hours and hours.

After awhile I was put into a cell. This was a round cell which was completely white and you can't even notice the door because the door is imbedded in the wall, so all you see is holes everywhere. I was told to sit in the middle of the room with my hands on my knees and not even move my head. They told me that they were watching and looking in to give me a good punch in the nose, so of course I complied and kept my head straight ahead.

After awhile they would take me in for interrogation. This is in to one of the interrogation rooms, I think it was 7, and I was put in the one interrogation room. There was special branch officers there from the RUC Police and a British intelligence officer.

Q. What happened to you in the interrogation room?

A. Well, when I went into the room, of course, they stripped me down to my underpants. They told me to stand in the corner and when I would stand in the corner they would put a rag over my eyes so I couldn't hear. They asked me about the general population, who did I know, all these sort of questions, and he wound up beating me about the back, etc.

[700] Then they would pull me underpants down and make fun of me private parts, and at a time they would squeeze them, which is, of course, of all the male members, it's pretty sore, you know.

They kept on questioning me, beating me, but they didn't seem to have any time for me as I could hear the screams from all the other blocks where they had IRA suspects and other political suspects. They came in and said "Bring him down to the number 2 room and give him the electric shocks. These were wires coming out of an electric box which they put on to people's testicles. They would give me things like this.

Of course I was scared in the main. They put me back in the cell, but I wasn't important, they just wanted to bring me in, ask me a few questions, etc. They didn't think Na Fianna was important. They wanted to know other information about the Irish Republican Army and I didn't know because I knew very, very few people that was in the Irish Republican Army.

After the two days I was told I was being released.

Q. What happened, were you released?

A. No. I was brought to the front gate. When I went to the front gate they; told me to put my hands out. I was handcuffed. It seems a pillow case was put over my [701] head and I was put into one of the tanks.

Q. Where were you taken, Mr. Doherty?

A. Well, I didn't know at that particular time until I arrived. I was put into the tank and the tank was full of troops and I was taken to East Belfast where the Maidstone Prison Ship is.

Q. When you arrived at the Maidstone Prison Ship, what did you see?

A. Well, they took me to the tank. I had my head covered, me handcuffed. They took the hood off and all I seen was this big ship sitting at the shore at the dock.

They told me to get up, so they brought me up the gangplank. When I got to the top of the ship they opened up the hatches of—the hatch.

Q. The hatch.

A. The hatches, and they told me to get down the stairs. I was pushed down the stairs.

When I got down to the bottom I was handed over to the prisoners.

Q. Approximately how many other internees were on the Maidstone at that time?

A. I would say there must have been 200, maybe two and a half hundred prisoners. They say that this is the worst conditions that I have ever spent in because we were through into the hold of the ship.

[702] Q. How long were you on the Maidstone?

A. I was there for four weeks.

Q. During your four weeks in the hold of this ship, did you come to learn who those other 200 people were?

A. Yes. They were—well, they were broke up into sections. There was members of the Irish Republican Army or—I think that was about 40 percent. The rest were official IRA, which took up another 10 percent. The rest were civil rights people, trade unionists, people who had spoken out against the government, people who just happened to have the name Sean MacMurray, which was the same name as somebody else and because British intelligence wasn't up-to-date. There was people who weren't in the republican movement down there, so the ship was pretty well broke up.

Q. How did the internees on the Maidstone organize themselves, if at all?

A. Well, they would elect a chairperson, who would be the spokesperson for the prisoners, and he would have meetings and consultations with what we call the governor, which in the United States you call the warden, the governor, or what we call on the ship the captain of the ship.

There was also cultural committees on the ship, educational committees, games committees, and also the most important one was there was an escape committee on the ship.

[703] Q. What did you learn about this escape committee during your stay on the Maidstone?

A. Well, I was told on occasions to watch at the porthole as the previous weeks before that the—the Magnificent Seven had escaped two weeks before this, so I was asked to do intelligence work, like watch out portholes and listen for guards coming because there was continual activity to get another escape on the way.

Q. You stated, I believe, Mr. Doherty, that approximately 40 percent of the 200 people interned on the Maidstone were members of the IRA. What if any contact did you have on the Maidstone with members of the IRA?

A. Well, of course, I was a member of the republican movement, so I was approached by the Irish Republican Army and they said "You are okay, we will look after you. Do you need cigarettes? You will be taking orders from us, because you are the Junior IRA," so I said, "Sure, no problem," and they generally looked after me, and they were my commanding officers, as well as the chairman on the ship who was democratically elected from the members of the ship, but it wasn't particularly a member of the IRA, but we had our own command structure and we commanded that.

Q. Were you still imprisoned on the Maidstone on Sunday, January 30, 1972?

A. Yes, I was.

[704] Q. What happened on that date, Mr. Doherty?

A. Well, of course, we knew that there was a very large civil rights march that particular day in Derry, so we were listening to the news. It came on the news that there was four, five people killed, later six people killed, and it was when we watched the 6 o'clock news that we knew the full extents of what the British had done in Derry. This is by watching the television, watching 13 people lying on the streets, British Army openly shooting people there and, of course, there was a lot of what you call sorrow on the ship and people were angry and people were openly crying that the British could do something like this.

This seemed to be—we thought on that particular day as we were expecting thirty to maybe fifty thousand people to march, that the British would listen to 50,000 people marching for civil rights and also for civil rights for the release of the internees.

So when the British were actually seen to be shooting people there, innocent people there, this brought a great change in my attitude.

Q. What change in your attitude did it effect?

A. Well, I had to say at that particular time if I were ever get to get out of the concentration camps, I was going to join the Irish Republican Army and fight for my country.

[705] Q. Did there come a time when you were removed from the Maidstone, Mr. Doherty?

A. Yes. After the four weeks I was informed by the captain on the ship that I was to be interned and that I was to be moved to one of the two concentration camps in Northern Ireland. This was Long Kesh Concentration Camp, which is situated on the outside of Belfast.

We were taken off the ship by paratroopers and put on the helicopters, troop helicopters.

Q. Mr. Doherty, before you were removed from the Maidstone to Long Kesh, did you have an interview with anybody?

A. Yes, I had an interview with the governor on the ship.

Q. Did the governor of that ship give you any document?

A. Yes, he did.

Q. I would like you to examine Respondent's Exhibit KK for identification. Have you seen this before, Mr. Doherty?

A. Oh yes. I seen this on—around the 30th of January, 1972. This is in fact my internment order.

MS. PIKE: Your Honor, I would ask that Respondent's Exhibit KK be admitted into evidence.

THE COURT: Any objection?

[706] MR. BLOCK: No, your Honor.

THE COURT: Received.

(Respondent's Exhibit KK for identification was received in evidence)

Q. So, Mr. Doherty, you are 17 years old and you have been taken to Long Kesh. Where is Long Kesh located?

A. It's located 14 miles outside of Belfast. This is a concentration camp. If I could describe it, it is all wire, of course. There are pill boxes with machine guns, search lights, soldiers patrolling the outer limits of the camp with what we call war dogs, what the British call war dogs.

The camp was actually broke up into compounds of 100 men in each compound and three sleeping quarters. These were tin huts, just like what you see on the movies of a prison camp, Treblinka, Belsen, these sort of places.

Q. How is Long Kesh organized during your period of internment?

A. Of course, like the ship, it was organized under a chairman of the camp. As at that particular time most of the prisoners weren't in the Irish Republican Army, they were just mostly innocent people or people belonging to the political parties that existed in the north of Ireland, so overall there was a chairman in each compound which represented the men. There was also commanders in each [707] compound representing the Irish Republican Army.

Q. Mr. Doherty, were any other members of your family interned?

A. Yes. My sister Ann, who is a year younger than myself. She was interned without trial the following year.

Q. For how long was Ann interned?

A. Oh, God. I think just less than a year. I had three brothers-in-law—the husbands of my three of my sisters were interned and of course a few cousins.

Q. Among all of these people that were interned, including yourself, were any charges ever brought against any of you?

A. No.

Q. How long did you remain interned at Long Kesh?

A. I remained interned, I think, for the next two and a half to three months.

Q. Did there come a time when you were released?

A. Yes.

Q. What did you do upon your release?

A. Upon my release I was picked up by the Green Cross, which is the prisoner's aid. They brought me to Belfast, brought me to North Belfast and let me out on the street.

Q. What happened when you were let out on the street in North Belfast?

[708] A. Well, as I was walking up the street on my way home to tell my mother that actually I was home, I was being released, just coming in, they say Doherty you are being released—this is during the time of IRA negotiations with the British government so the British government, to show good faith, released about a thousand prisoners. I was one of these thousand prisoners to be released.

When I was walking up the street I was stopped by British paratroopers. They told me that I was being arrested.

Q. How long had you been out of the Kesh at this point?

A. About two and a half hours.

Q. Continue.

A. Of course, the people came out of the district, all the women, because this is very—if somebody is going to be arrested on the street, all the women get out with the bins and whistles. This is to indicate to the general population of the ghetto that someone was being arrested. This would create a lot of noise and warn other people

who were on the run that the British Army were doing a raid.

All the women came in the street. My God, there must have been 70 to 90 women which surrounded the tank and they forced the British Army to release me. They weren't [709] abusive to the British Army. They persuaded the British Army that, Christ, the lad just got out of jail, give him a break, so the British Army told me "We will get you tomorrow night, Doherty."

Q. During your period of internment on the Maidstone and later at Long Kesh, you stated that you had arrived at a decision about what you were going to do when you were released.

A. Yes.

Q. Did you act on that decision?

A. Yes, I did.

Q. What did you do?

A. I went about to join the Irish Republican Army and Sinn Fein.

Q. You have told us already about how you went about joining Na Fianna Eireann, an illegal organization which was part of the republican movement. How did you go about joining the Irish Republican Army?

A. Well, I knew Irish republican volunteers in prison, so of course I got a recommendation from them that I could go into the Army.

I approached what is known as the recruiting officer. This is a staff officer on the local company. He approached me, asked me the usual questions in an interview, why do you want to join the Irish Republican Army. I told [710] him at that very young age that I wanted to fight for my country. I thought the British shouldn't be here. I thought the best way to bring peace in the country was for the British to withdraw and the best way to get the British out of the country was the traditional armed conflict.

He began to explain the aims and objects of the republican movement, the constitution. He showed me the constitution of the movement. He showed me the army regulations and orders, is what we call them, the orders and regulations. This is the standards of regulations that's in the Irish Republican Army; you know, breach of security, breach of orders.

He went about to what you call—he swore me in. This was over a Bible. This is a tradition going back to 1920. It's a bit old fashioned, but it is a Bible, the national flag and a 45 revolver. He told me to put my hand up and swore me in. I, Joseph Doherty, swore to give me allegiance to the Irish Republic and to the constitution of 1918, etc., etc. He told me that I was now a volunteer in the Irish Republican Army and a soldier of the Irish Republic.

For the next two to three weeks I was given training lectures on history of the movement, what the IRA is, guerrilla tactics, arms lectures. This was the weapons that was common at that period: Thompson submachine guns, [711] how to strip a Thompson submachine gun, M1 carbines. Basic weapons that we were getting supplied.

Q. During this same period of time did you become familiar with the command structure of the Irish Republican Army?

A. Yes.

Q. Could you describe briefly how it was then organized?

A. Well, I could maybe explain the Belfast Brigade. The Belfast Brigade comes under the commander, of course. The commander of the Belfast Brigade. Under him was the Belfast Brigade adjutant and under that was the Belfast Brigade staff, quartermaster, training officer, PRO, etc.

Belfast at that particular time was broken up into three battalions, the First, Second and Third Battalion. Each battalion had four to five to seven companies. I myself was in C Company, Third Battalion, Belfast Brigade, Northern Command, Irish Republican Army.

I was also in one of the sections in the company. I think at that particular time it was D Section. It was just based on the regular British Army. A bit, not too much.

Q. During this period of time immediately after you had joined the Irish Republican Army, just briefly what were your general duties as a volunteer?

[712] A. Of course, my duties was to be a soldier. We also had regulations like not to bring the Army into disrepute. This is, of course, being drinking in public, etc., bringing the army into disrepute by bad language or abuse to civilians, etc., but as a soldier my main job was to confront the British, the British Army as an infantry soldier.

We also at that particular time [had] other responsibilities. There were responsibilities of defense of the district, intelligence, the policing of the district and also social work or what we call the cat up the tree policy, where a woman would come around to the Irish Republican Army and say their cat was up a tree. The officer in command would sent two volunteers to get it and it sort of a broke up and we weren't just an army, we were a service to the general public inside the ghetto. We were looked up to as the police, the army, the political leadership inside the ghetto.

Q. In the Irish Republican Army, how and by whom are decisions made as to whether a particular operation should be engaged in?

A. From the highest command. If an operation was in, say, West Belfast, the operation would be sanctioned by the battalion officer in command in North Belfast Battalion OC. He must give directives or he must sanction operations.

[713] Like myself, just being a volunteer I couldn't lift a weapon and go out and start blasting at a British Army foot patrol. We must get permission, and of course after every operation you had to give a brief statement of was there a target hit, did everybody get back okay,

etc. You just can't pick a weapon out. To break one of these orders would impede you to a court of inquiry and a court marshal.

Q. We will get into those in a moment. Before we do, though, let's talk a little bit about operations. What factors would go into planning an IRA operation?

A. Of course, the operation must be secured, the fact that no civilians were to be injured at all. This was not the purpose of any operation, IRA operation. All safety regards were to be given to the civilian population and, of course, to the volunteers to make sure that they got back to base safe and without the loss of life.

Of course, over the period of a 12 to 13 year war there has been a number of civilians killed on operations, but this has been through—I suppose I can say negligence on some of the explosives officers or the commanders on the scene not sort of taken into account that a 30 or 40 minute warning was inadequate for a certain bomb.

Also warnings that were given were ignored by the British Army. This of course would give great [714] propaganda to the British government and loss of support. We would phone up and say we have planted a bomb in such and such. You have got 30 minutes to get out. There is an anti-handling device on it.

At times the British Army has ignored this. They have said yeah, okay and they would ignore the warning and let the bomb go off. This was done in 1972. I think it was in the May period, what is known as Bloody Friday. This was a great disaster for the Belfast Brigade, and when the Belfast Brigade attacked the City Center, I think there was 25 to 26 units went on the attack.

This was a large bombing. Warnings were given on all bombings. The warning was given to the police. The warning was given to the army. Some of these bombings were ignored. Most of the bombs went off with no casualties, but I think there was three specific bombs went off. It was a very, very sad day for I guess everybody, and even the volunteers inside the Irish Republican Army

felt very sad that these bombs went off because there was a lot of civilians were killed. I think there was nine civilians.

But as well as giving the warning to the British Army, there was a warning given to what's known as the St. Martin's Group. There is an independent Christian group where people who are in the process of committing suicide, etc., would phone up, I have got a problem, so as well as [715] phoning the army and the police, we usually phone up independent newspapers and the like of the St. Martin's Group.

Some of these bombings were ignored. It didn't come out until after the inquiry, I think, that the St. Martin's did admit that we got the warnings and we passed them on to the British, as the British got on that night on the television and said the IRA is out on a genocide to wipe out the population in Belfast, there were no warnings, there was no warning to the bombs.

I have to point out that the Army regulations in the Irish Republican Army is all warnings to the civil targets or economic targets.

Q. Let's talk about the regulations a little bit. Are volunteers subject to court martial for violation of these regulations?

A. Of course.

Q. What sort of circumstances would subject a volunteer to court martial?

A. Well, of course, inside the Irish Republican Army we have a court level. This is what is called an army court of inquiry. This is where volunteers like myself bring the army into disrepute being drunk—that turned up at meetings. Sort of very, very small breaches of regulations in the Irish Republican Army.

[716] Also court of inquires were to deal with, say, if a bombing mission went on and it went wrong, as out of all the volunteers that's been killed in the last ten years, at least 33 percent have been killed by their own bombs;

because they went off premature, the clocks were wrong or the detonator jumped or something like this.

So after every operation that does go wrong there is a court of inquiry. It convenes, gets all the information on what happened, how was this volunteer killed, was the ambush or the attack that carefully screened, etc., etc.

This we put forward and if charges are to be led, they are sent forward to what is known as a general army court martial. This is on a very, very high stage of the Irish Republican Army. This deals with people who are spies within the movement, people who are breaking not under torture, but giving information about the volunteers and the arms within the Irish Republican Army, volunteers who breach any serious orders.

This is like not giving enough warning as there is a directive from the brigade that you must give an hour warning, but if you knew the people could get out in time of a certain place, a 30-minute warning. If a volunteer doesn't take this into account, that he only gives a 20-minute warning instead of a 35-minute warning, then he [717] is in breach of the regulations. He goes before the court of inquiry and if he is found to be guilty—it is sort of a lower stage magistrate's court. If he is proven to be guilty of negligence, then he goes on to the higher court martial.

Q. Mr. Doherty, you had mentioned courts martial, courts of inquiry, and in an earlier answer you had made reference to operations inquiries. What if any relation do operations inquiries have on maintaining discipline within the Irish Republican Army?

A. Of course, it has a lot to do, but discipline—as the British Army have said and the Document 37, we noticed that the Irish Republic Army have a military code of ethics, that they do recognize that we have very strict regulations.

This is when we do an operation, it must be intelligence on a particular operation, civilians are the first preference in going about this operation, civilian casualties. Of

course, making sure volunteers get away, the weapons don't be caught.

So of course like the New York Police Force or ary army, you know, you watch your step and you stick to the regulations or you will face the judge, as we say in the army.

Q. Have you ever been involved in any operation [718] that provoked a court martial, Mr. Doherty?

A. No.

Q. A court of inquiry?

A. Well, I have been before a court of inquiry, yes, for bringing the army into disrepute.

Q. How did you bring the army into disrepute?

A. Well, I was very young at the time and, of course, I was only 17 or 18. I went out and had a few drinks. I sort of got carried away at a dance and I was spotted by an officer who put me on a charge. I had to face the court of inquiry the following night. I was suspended for a week from the Irish Republican Army and I was heavily reprimanded.

The Irish Republican Army take into account that we must show to the general population, that is the republicans, we show a very high light. You know, culture in Belfast, somebody who is very, very good, you would say he is a good republican. Republicans are seen as the highest stage in Irish society and, of course, of myself walking about drinking and whatnot, that brings the army into disrepute, so at that particular time I was charged, but I have had a clean record all the way through.

Q. Mr. Doherty, at the time you joined the Irish Republican Army, what was its policy relative to civilians as the targets of military operations?

[719] A. Well, military operations was the first preference. Civilians were not the targets of the Irish Republican Army. As I explained before, there has been over a number of years bombs going off, warnings not being adequate, etc. Of course, this is the fault of the Irish Republican Army.

I am not going to throw it all on the British, that the IRA over the past 15 years have done a very, very heavily bombing campaign and, of course, like all wars, which I hate to say things, I guess, that you do have civilians casualties in all war, this is proven in the Second World War, the Viet Nam war, every war you can imagine going back to the American revolution, that the war civilians do get harmed. It's a very sad fact of the war.

The IRA always issues a statement after the bomb and in the matter of whether the bomb went off wrong or not, and I think the British press can admit to this, that when we issue a statement it is true to fact. We have issued a statement saying yes, our battalion, Second Battalion did do this bomb. We apologize to the population. We sympathize with the people who maybe lost someone in the bomb explosion, there will be an inquiry into it. We will try not to let it happen again.

If you take over the ten-year period where there has been up to 11 to 13 different bombing instances, well, [720] I hate to say this, but the civilian rate is very low, although, of course, if one civilian is killed within the whole ten years it is still too high, but the Irish Republican Army has a poli[illegible]nd general regulation not go for civilian targets in the war zone.

Q. During your period of service as a volunteer in the Irish Republican Army, did this policy ever change?

A. No.

Q. Mr. Doherty, March 1973, did you have occasion to be arrested?

A. Yes. I was captured by British commandoes on March 17.

Q. Would you describe the circumstances of that arrest?

A. Well, of course, March 17 is St. Patrick's Day and the company commander put us all on standby. This is done on most occasions where people celebrate, St. Patrick's Day, Christmas day, etc., and of course being St.

Patrick's Day the Irish seem to celebrate themselves. You know, not just in New York, but back in Ireland too, so we were put on a general standby, what you call police standby to patrol the streets, to checkout the public houses and clubs and make sure that people weren't getting too much to drink, to make sure people got home, to encourage the people not be get involved in riots, and especially at that [721] particular time there was a lot of sectarian murders.

We mostly stayed around for friends, to watchout for strays, for cars, everybody celebrated. We made sure there were no riots, but generally to keep the night a peaceful night.

I was going down the street, me and these two other guys, when we were stopped by the British Army. They jumped out behind a wall again and they put me against a wall. They found that I had a weapon in my pocket, a weapon.

Q. How did you come to be patroling the streets of Belfast that night?

A. I just finished explaining. I was on patrol.

Q. On patrol for whom?

A. For whom? I was doing police patrol to make sure that nobody strayed outside of the ghetto, to make sure that nobody came in the ghetto. I was doing defense work and police work.

Q. What happened after you were arrested that evening?

A. When I was arrested I was taken back to Glen Ravel Street, to the army section of the police station, where I was brought to the cellar and given the routine torture. I will not go into that because it only repeats itself. They were looking for information.

[722] I told him as a volunteer and under the Geneva Convention that I am not saying nothing. They went about torturing me.

After a few hours they handed me over to the police on the other section of the police station. They brought

me to court and charged me, brought me to Crumlin Road Prison.

Q. Did you eventually stand trial on those charges?

A. Yes, I did.

Q. With what were you charged, if you remember?

A. I was charged with possession of a handgun. This was a starting pistol. It was an unlethal weapon. It was a starting pistol.

Q. What sentence did you receive?

A. I received one year in prison.

Q. Where were you sentenced to serve it?

A. I was sentenced to Long Kesh Prison Camp again.

Q. Upon your arrival at Long Kesh Prison Camp, did you claim allegiance with any particular group?

A. Yes. I claimed allegiance to the Irish Republican Army.

Q. What did the Irish Republican Army do in response?

A. They took me in.

Q. As a result, did you have any particular kind of [723] classification as a prisoner?

A. Yes. I was classified as a political prisoner or, as the British say, a special category prisoner.

Q. What relation did the act of claiming political status have to your political views?

A. Well, of course, in political, I am a soldier and I am a prisoner of war. In the Irish Republican movement at that particular time we had political status. This was to recognize us as different from criminals. As it were, the prison was separate from the other prisons where you would have what you call ordinary prisoners. These were prisoners who wore prison garb, prison clothes. They had to do manual work, etc.

But ourselves as political status prisoners were separate from this. We were allowed to wear our own civilian clothes. Our command structure was recognized. We were segregated from the other part.

Q. Excuse me. Your command structure was recognized by whom?

A. The British government and the prison administration.

Q. Continue, if you will.

A. Pardon me?

Q. Continue, if you will. You were explaining the differences between political status prisoners and ordinary [724] criminals.

A. Yes. Well, that is basically it.

Q. During the second period of imprisonment in Long Kesh, Mr. Doherty, were you provided any education and training by the IRA?

A. Oh, yes. I was provided with military education and also education in politics.

Q. What was the nature of this training? How long a course was it?

A. Well, I was being released at Christmas, so I was put on what is known as an officer's training course. The last six weeks I was taken, myself and ten or twelve other prisoners who were getting out, we were taken into a sort of a what you call West Point or Sandhurst training. We were taken into the six-week course where we would do drill, command jumps, unarmed combat, how to be an officer, how to give orders, how to use directives in, say, the republican movement, etc., all the basic things to be an officer in the Irish Republican Army, weapons training, etc., and then I was released on Christmas of 1973.

Q. How were you selected to receive this six-week course?

A. How?

Q. Yes.

A. Because at the beginning of the six weeks I was [725] approached by the battalion staff in the prison. They asked me would I be reporting back to the army.

This is a phrase for a person who gets out and reports back to his or her unit. I said yes, I was.

He told me, okay, you are going through a six-week training course. This was an officer's training course, and I complied with this order.

Q. I believe you said that you were released around Christmas of 1973?

A. Yes, I was.

Q. What did you do upon your release?

A. Well, the day of being released I was told by the commanding officer, I think it was F Company then, Cage 13, as the camp was broken up into companies, that I had 24 hours to report back to the army. Of course, when I got out, I met my mother and father, no less, but late that night I met someone and told him I was reporting back, and he said okay, have a week or two off.

I told him that I wanted just a week off, that I wanted to get straight back into the Army.

Did you get straight back into the Army?

A. Oh, yes.

Q. When you reported back, what if any additional responsibilities were you given at that time?

A. Well, I was commissioned as a staff officer in C [726] Company, Third Battalion, Belfast Brigade. I was given the specific position of quartermaster, which is a staff officer's position. Company staff officer position.

Q. What were your duties as the quartermaster of C Company?

A. All quartermasters have to look after arms, the dumping of arms, the cleaning of arms, the distribution of arms, gathering ammunition. If I was short of 9 millimeter rounds, you have to approach the batallion quartermaster. And told him I needed certain supplies in my company area and that was my general job, and also making decisions inside the company.

Q. Where were you living at this time?

A. I was living in what's known as on the run. I didn't stay in my own house.

Q. Why were you not living at home?

A. Because internment was still on at that particular period and orders were given to all staff officers who were known to the British to stay out of the home, so I stayed in sympathetic homes.

Q. During your period of service as quartermaster, did there come a time when you were again arrested?

A. Yes. I was arrested again on—I think it was the 1st of February, 1974.

Q. Would you describe the circumstances leading up [727] to that arrest, Mr. Doherty?

A. I got a communication from the battalion quartermaster in the Belfast Brigade that I was to ship explosives up to the First Battalion which is situated in the upper west of Belfast. They said that they needed supplies across the city and I was to supply them, so there was a car supplied and I put 80 pounds of explosives in the car. I was to meet the other quartermaster at a certain point in the city.

On the way to this point, going out of the ghetto, I was stopped by the British Army.

Q. What happened?

A. I was arrested. They searched the car and I was taken away for questioning.

Q. Were you eventually charged?

A. Yes, I was.

Q. With what were you charged?

A. I was charged with possession of explosives.

Q. Were you tried on these charges?

A. Yes.

Q. What attitude did you take toward the court during these legal proceedings?

A. I informed the court that as a volunteer in the Irish Republican Army. I refused to recognize the jurisdiction of this court as a foreign court and as a [728] republican I wished to be seated.

Q. How did your action in refusing to recognize the court relate specifically to your status as an IRA volunteer?

A. Oh, this is the army regulations as well, that all volunteers being arrested and on the event of being convited at the trial, they must refuse to recognize the court.

You could ask for permission to recognize the court from the Army by sending a communication from the prison that you wished to recognize the court, but I got the communication that I was to not recognize the court.

Q. What was the outcome of these proceedings?

A. I received ten years.

Q. Pending this trial where you were eventually sentenced to ten years, where had you been held?

A. I was held in Crumlin Road Prison.

Q. During that period of time were the IRA volunteers in the Crumlin Road Jail organized along roughly the same lines you described earlier?

A. They were organized as a battalion.

Q. What if any committees existed among the IRA volunteers in the Crumlin at that point?

A. Of course, like all IRA prisoners, when you get three or four IRA prisoners together in the a [*sic*] prison, three [729] or four prisoners organize or select someone to be leader and also they gather themselves in an escape committee. You know, the duty is to escape.

There was an escape committee existing at that time.

Q. What if any contact did you have with the escape committee?

A. Well, myself and another volunteer came up with an idea to escape. We drew up the plans, as you don't walk to the escape committee and say, hey, I want to go over the wall. You must go with plans, how much rope you need, how many blades, how long it will take you to get out, etc.

So me and this fellow—me and this other volunteer came up with this idea to get out of the prison. We

formulated the plan. We brought it to the escape committee in the command of the jail. He looked at the plans.

He said it was pretty good. He says "I'll send out word to the brigade."

The brigade sent in word to let them go ahead because there was escapes every day from the Crumlin Road Prison. People was always digging holes in their cell, digging holes in their wall. People was going over the wall, hiding under food trucks. It was a constant thing.

So myself and the other volunteer went about to [730] saw the bars in the cell and one particular night we got through the bars about 4:00 in the morning. We were dressed as commandoes, what you usually see.

We got down the wall and went towards the wall to the outside of the prison and we were caught. The searchlights went on and we were captured.

Q. Did you receive any additional sentence for the escape a attempt?

A. Yes. As well as the ten-year sentence, we got 18 months jail term for the escape—escape attempt.

Q. So your escape was unsuccessful, you are returning to the Kesh for a third time on a ten-year sentence on possession of explosives. Approximately how old are you at this time, Mr. Doherty?

A. I think I was 19 years of age.

Q. Did political status still exist at the time of your third round of imprisonment?

A. Yes, it did.

Q. Did you claim allegiance with any particular group?

A. The Irish Republican Army, as before.

Q. What was the response of the Irish Republican Army?

A. I was claimed as a member of the Irish Republican Army.

[731] Q. How were you classified in 1974 at the Kesh?

A. As a special category prisoner, or as we say, a POW.

Q. Again, Mr. Doherty, without going into extensive detail, but if you would, how did captured IRA volunteers organize themselves in the Kesh at this time?

A. Well, I will try not to go into much detail, but again the camp is broken up as a battalion. As that particular time there were two battalions in the camp. The internees who were situated in down camp were organized into a battalion. Up camp was the convicted political prisoners. They were also known as a battalion.

We had the battalion officer in command, the battalion adjutant, his staff. Each cage was broken up into 100 men. It is a wife cage with huts in it. They were broke up into companies, A company, B company, and the company that—I was in most of the time in Long Kesh was C Company.

Inside the cage, of course, were the officer in charge of the cage or the company OC, the company adjutant, the company staff, quartermaster, drill segreant, etc., and the huts were broken up into sections. Of course, the volunteers. Of course, in each cage there was an escape committee and then the battalion escape committee, they were to coordinate all escapes, etc.

[732] The battalion quartermaster, he was in charge of all the battalion equipment. That would be ropes, wire cutters, shovels, bulbs for the tunnels. Everything that was to do with the tunnels or escapes, and cameras, of course.

Q. Mr. Doherty, I take it you are pretty familiar with Long Kesh?

A. Oh, it is a second home.

Q. I am handing you an exhibit, Mr. Doherty, marked Respondent's Exhibit QQ for identification. Would you look at that, please, and tell me if you can identify what that shows?

A. Yes. This is the map area of Long Kesh or what —the British tried to change the name to the Maze. This was opened in 1971. It was an internment camp, but Britian being embarrassed that this was the only

concentration camp in Europe since the Second World War, they tried to change the name. They came in and told us don't call it Long Kesh any more, it is the Maze prison. This is to give respectability to the rest of the world.

This is like the Germans changing Treblinka and Belsen Camp to Flower City and Sunshine Camp. It was to give a reflection to the rest of the world that we have closed these camps down. So this is what you call the old Long Kesh camp.

[733] In 1974, I think, they started building what's known as the H-Blocks. This is for the impending criminalization policy that the British was going to bring in. This is, of course, the camp.

Q. Would you please, with the pen that I am giving you, designate—circle the area in red where prisoners with political status were kept during your stay at Long Kesh?

A. This was the actual camp. There was I think 23 cages with 90 men in each cage. There was, I don't know, a few thousand in them.

Q. The area that you circled, is that the area in which you were kept during your stay?

A. Yes.

Q. Where were the ordinary criminals kept?

A. Well, the ordinary criminals were kept at the very corner of the camp. The only reason why the ordinary criminals were in the camp was because they were cooks. They wouldn't let us go down to the cookhouse with all that equipment, because we would take it for tunnels or some means to go out, so they brought the ordinary criminals from the other prisons to be cooks, do the laundry, etc., bring all the food up to the H cage, so they were way down in the corner of the camp. Think were kept well away from us.

[734] MS. PIKE: Your Honor, I would ask that Respondent's Exhibit QQ be admitted into evidence.

THE COURT: Any objection?

MR. BLOCK: Relevance, your Honor.

THE COURT: It's not very relevant, but I take it a lot of evidence in this case has bordered on the irrelevant, so I will take this too.

(Respondent's Exhibit QQ for identification was received in evidence)

Q. Mr. Doherty, during this period of imprisonment, did you hold any staff positions on the IRA staff?

A. Out of the ten-year sentence that I was given, I served five years and nine months, so over the long period of time I held several staff positions in Long Kesh, from the section leader, company staff, officer's position. I was a company quartermaster, a company training officer, a company drill sergeant—well, we call them a drill officer. You call them in the United States Army drill sergeants. I was in charge of the men in the yard and military formation, etc.

After that I was a company—my God, I was everything—a company finance officer, and the highest rank that I have ever held inside the company was the company adjutant. I was the second in command of a company of 78 men.

* * * * *

[CROSS-EXAMINATION]

[767] Q. Protestant paramalitarists.

A. Yes. As I stated before, my house was on the fringe of the ghetto and, of course, on the fringe of the ghetto, since I was in jail, I had contact with a lot of Protestants. I have got cousins that's Protestants. Half my family is Protestants. So I had some sort of connection. With this connection I knew some of the Protestant men that was entering the district.

Q. And it was after this incident that you joined the IRA Boy Scouts, right?

A. Oh, no, no, no.

Q. Sometimes after that, I mean.

A. Yes. It must have been a year or maybe fourteen months. I am not too sure. It is when I come back from

London. When I come back from London, I think I come back around September of 1970 or even before that. I am not too sure.

Q. You were telling us on direct examination about St. Patrick's Day 1973.

A. Yes. March 17, I believe it was.

Q. You were arrested by a British Army patrol?

A. Yes, marine commandos.

Q. Were you alone or were there others with you?

A. I was with three other men. I was arrested with three other men.

[768] Q. You happened to be out on the street because you had been assigned to hold yourself available in case your services were necessary, is that right?

A. Yes. It is what you call a standby. When you are on standby patrol, you would be approached one night and told you are on the 24-hour patrol or 24-hour standby, and we go on standby. This is in case you have to be called up or you get any direct orders.

Q. At least as far as you understood it, what were you standing by for, that is if you had been called out to go on duty, what would the nature of your assignment have been?

A. Well, it varies from defense work, generally patrolling the streets, police work, making sure nobody gets overcelebrated with drink, if you understand what I mean.

Q. In plain and common terms, are you saying that you were supposed to be available in case some people drank too much and got rowdy in honor of St. Patrick's Day?

A. Yes.

Q. You were supposed to make sure they got home safely and didn't fall over themselves or get into fights with each other?

A. If you take the street I was arrested, I think it was Upper Mather Street, this is one of the fringe [769] streets. You usually get people who would maybe be drunk, or something, you get some fellow would be drunk

and he would probably walk to the fringe, he would turn left instead of right and walk maybe into a Protestant ghetto or walk on to one of the main roads.

It was—generally the Irish Republican Army would be on patrol or Na Finna Eireann or else the auxiliary.

Q. How was the starter's pistol going to assist you in performing those duties?

A. My God, I wasn't going to shoot anyone. In case maybe somebody got overdrunk and said who are you, or what, so usually what you should do is open your coat, this is the standard procedure of the Irish Republican Army, that you would open your coat, because the IRA don't have police badges or police hats or a bandolier.

So, of course, when somebody—maybe somebody is against your authority, you would go Irish Republican Army or auxiliary IRA, or whatever.

Q. A gun was going to be your identification, is that what you are saying?

A. Pardon?

Q. In case someone challenged your right of what to do, the gun tucked in your waistband would be your identification?

[770] A. Yes. The IRA haven't much arms and of course the arms that was there, that was the first one that was given to me. There was a number of arms, of course. The other two men were also carrying arms, but I think they had a .45 and a .38 which had no bullets in it.

Q. Did you tell us that you were arrested and ultimately convicted and went to prison for about six months or seven months?

A. I received a one-year sentence. Back in the north of Ireland you serve two-thirds of your sentence, so it would be nine months out of the year.

Q. Then when you came out, you reported back to your commanding officer, is that right?

A. I reported back to the Irish Republican Army, yes.

Q. You said you reported back to the army, but it is a little bit difficult to report to the whole army. You reported to some body or some bodies in particular, right?

A. You report back to the local company, unless you were assigned to a battalion from inside the prison. But at that particular time I was only a soldier on parade, whatever you call it. When I was released from prison, I was told "report back to your local company."

Q. And that's what you did?

A. Yes, of course.

[771] Q. That was about Christmas of 19—

A. '73.

Q. '73, is that right?

A. That's correct, yes.

Q. Was that about the time that you assumed the duties of being company quartermaster?

A. Yes.

Q. That was a promotion of some kind?

A. Yes. You could say within the company, yes.

Q. Excuse me?

A. You could say within the company. The level is the volunteer—well, all members of the Irish Republican Army are volunteers because it is a volunteer army, but we have—at that particular time you have section leaders, staff captains, staff officers, adjutants, all the way up, so I was appointed to the next stage up, which is a staff officer's job.

Q. Then you said that you received a direction from —was it the brigade or the battalion?

A. Yes, the battalion, which got it from the brigade.

Q. To do what exactly?

A. Well, we received a communication down from battalion that we had to make contact in the first battalion, which is situated in West Belfast; that they [772] were looking at explosives, so I got in touch with an engineer—an engineering officer is a staff officer's position in the Irish Republican Army. I received a communication from the battalion QM that the first battalion

were looking for around about 80 to 90 pounds explosives and I went about to do that.

Q. You had to go somewhere to get the explosives, right?

A. Yes. This is in a dump, what we call a dump.

Q. A safe hiding place?

A. Yes.

Q. A storage place?

A. I didn't know where it was. This was the engineer's dump, if you know what I mean. My particular job was quartermaster, to look after arms, not explosives.

Q. At some point you came into physical possession of those 80 or 90 pounds of explosives correct?

A. Yes, I did.

Q. Where were you and where were the explosives when you came into their possession?

A. As I said, it came under the company engineer.

Q. What I am really asking, Mr. Doherty, I am not asking for the street address, but were you on the street, in a garage, on a boat in the harbor, that kind of thing.

A. Well, the New Lodge district is a very small [773] district, so I can't say a church, because there is only one church. It was in a—I could say a garage, a type of garage.

Q. You were assigned the responsibility of seeing that these explosives would be transported to another part of the city, correct?

A. Transported, yes.

Q. What did you do to try to fulfill that responsibility?

A. I tried to do it to the best of my ability, to transport it to West Belfast.

Q. You don't pick up 90 pounds, put them on your back and go walking across the city, do you?

A. No, of course not. There was a car provided by the unit.

Q. A car provided by the unit?

A. Yes.

Q. From the motor pool? This is an army without a motor pool, right?

A. Of course. There is no motor pool.

Q. How was the car obtained?

A. The car was obtained by the company through highjacking the car.

Q. When you say that, what exactly do you mean?

A. It's going and taking somebody's car. This is [774] very common within the Irish Republican Army.

Q. Taking possession at gunpoint or with the threat of force if the person does not relinquish the car?

A. Usually volunteers approach persons who have a car, usually on the main roads of the district. They would approach the person, state as a member of the Irish Republican Army and under the laws we are commandeering your car.

Q. Under the law?

A. Of course, it is not exactly word for word.

Q. Under the law [you're] commandeering the car?

A. I'm sorry, under the war procedure. It depends on each company, but what it usually is, we are taking your car, Irish Republican Army.

Q. That's generally regarded within the Irish Republican Army as a preferable means of obtaining automobile transport than using some member's car or stealing a car from a place where it's parked?

A. Well, there are times that cars are merely taken out of car parks, but we are not experts in taking cars and that procedure. The company OC said he would provide a car and apparently he got volunteers to go out and highjack a car.

Q. You mean it would be too difficult to break into a locked car and start it up without keys, for the Irish [775] Republican Army to accomplish that?

A. The company commander at that time must have took the initiative that he needed a car quicker, but I am not too sure. As soon as he got the car I was in prison. He just said he was going to provide a car and they went out and got a car.

Q. You were arrested by the army patrol with the explosives in the car and there was another gentleman in the car, was there not?

A. Yes, there was.

Q. Mr. Hehir?

A. Hehir.

Q. I take it that Mr. Hehir was another member of your company of the Irish Republican Army?

A. Yes, he was.

Q. At the time.

A. At the time, yes.

Q. Then you and he found your way together in the Crumlin Road Prison, correct?

A. Yes, we did.

Q. You were imprisoned in the same part of the jail, you and he together?

A. Yes. As a matter of fact, we were in the same cell.

Q. The same cell. And it was with him that you [776] sought to saw out the bars of your cell to make an escape, correct?

A. Correct.

Q. That particular escape attempt, that is something you undertook at your own initiative?

A. Of course not, no. I have explained before that we have to go through the authority inside the prison and out.

Q. The means by which you were going to escape, was that something that you and your cellmate drafted up?

A. Yes.

Q. And proposed as a plan up the chain of command?

A. Yes. To the escape committee. They are the people in the prison who deal with it. The battalion OC's decision and the battalion OC's responsibilities are the social welfare of the prisoners. He designates different people to jobs, education, intelligence, training. He is the centerpoint, and also he has an escape committee to deal with all the different aspects of escape.

Q. Mr. Doherty, when you went into the Crumlin Road Jail in 1974 after being arrested with the explosives in the car, how did you know that the people claimed to be the escape committee were in fact the escape committee?

A. Because I knew.

Q. I am asking you how you knew it.

[777] A. Well, I was a volunteer. At that particular time I was a section leader on the third floor. As the Crumlin Road Prison is built on a three tier system, there are the what you call the ones, twos and threes and on each tier is a company, A Company, B Company, C Company. I was on C Company, which was number 3 level, and I was a section leader up there, so of course I had contact with staffs and I had contacts with battalion staff in the prison.

Also I knew some of the IRA prisoners from the past being in prisons and of course outside, so after awhile, I explained before that the escape committee is not a secret committee, it is a semi-secret committee.

Q. What does that mean?

A. I mean they don't walk about—well, you have the prison authorities know who the quartermaster is, he knows who the training authority is. As the prison authorities come in to the wing, they would say to one of the people, can I speak to your quartermaster, and John or Paul or Mike, they would have negotiations with the quartermaster over food, eggs, bacon, whatever is the shortage, but the escape committee is a semi-secret committee within the army and the prison.

So while the volunteers might know who the escape committee was, not necessarily the prison authorities, sir.

[778] Q. You were released from Crumlin Road—

A. In September of 1974.

Q. September or November?

A. November it could have been.

Q. Of 19?

A. '74. When I was released from the Crum and went to Long Kesh?

Q. Well, when were you released from confinement for the charges to which you were convicted of the explosives and then the escape?

A. Christmas of 1979.

THE COURT: So you served what, abopt five and a half to six years?

THE WITNESS: Five years and nine months exactly. Back in Northern Ireland you do three-quarters of your sentence, but when they brought the criminalization policy in, plus with the negotiations of the '75 truce, this was a ceasefire that the IRA had with the British government, I think there was certain concessions and one of the concessions was that the three-quarter sentence should be brought down to a half, so if a person gets 12 years he does six instead of originally doing eight out of the 12.

Q. When you were released in late 1979, where did you go to live?

[779] A. I went to live at Spanner Street, which is in the New Lodge district of North Belfast.

Q. Did you seek employment at that time?

A. Seek employment?

Q. Yes.

A. There was no employment. Very, very little.

Q. Did you try?

A. Well, of course. I asked around. I got maybe a day work here and a day work there. I can maybe point out that getting out in 1979 I was approached by the Irish Republican Army—I was told when you get out this time keep a low profile. That meant by getting out I wasn't to tell people and go back to the army, I was to put on a profile that I was what you call tired of being in prison, all this here, not express your republican views too much. Keep a low profile. Go out with girls, have a good time, but don't get too involved with the British Army. Let the people know that you are living normally as you could probably say back in Belfast.

Q. Part of that would have been to take up employment in your craft as an apprentice plumber, is that correct?

A. Yes, but with the plumber, when I we interned, of course, I lost my job. That ceased. I think the time I done plumbing was maybe 18 months to two and a half years, [780] so of course I hadn't got a trade when I got out.

So when I was released in 1979, Christmas of 1979, I looked about to try to get a job here, but there was no work. If you take a ghetto situation with up to 42 percent unemployment, a person like myself getting out of prison, you will have to cue up, as they say, you know.

Q. How did you support yourself then?

A. My parents supported me. Also I collected at that time a few weeks unemployment benefits.

Q. That was paid for by the British government?

A. Of course.

Q. May 2 of 1980 you told us that you were at that address Antrim Road?

A. That's correct.

Q. Between the time you were released at the end of 1979 and May 2 of 1980, what activities as a member of the Provisional Irish Republican Army did you engage in prior to the events of the second of May?

A. Well, of course, as you notice, that was a very, very short time period.

Q. That was longer than you had been at liberty any time in the past.

A. Yes. That was, what, four months, three months?

Q. Five months.

A. Five months? It's getting up.

[781] Five months. Well, of course, when I was released from prison I reported to the army. I made my contact with the Irish Republican Army. They told me that I would be assigned to an active service unit of the Belfast Brigade.

Of course, it was pretty new to me coming out of prison, as I explained before, the different sections of the Irish Republican Army. I was taken by the Belfast Brigade and sent on an officers' training camp. This officers' training camp was broken up into arms training, drilling, the directions in which the war was going, especially on the SAS, as the SAS was being more and more since 1976.

I was given a breakdown on SAS surveillance. I was given further political lectures, etc. I was given an update, and this took up to four or five weeks. It was what is called breaking me in as being an active service volunteer.

Q. That took four or five weeks?

A. Four or five weeks, plus I didn't report back until January. I reported back the first day. I think it was in November and I was told to report back after Christmas.

Q. This camp was somewhere outside Belfast?

A. Well, it was outside of Belfast. I will give [782] you that.

Q. Mr. Doherty, when the camp was concluded, was that when you joined an active service unit?

A. I was assigned to an active service unit, yes.

Q. When was that?

A. It was around the—

Q. What part of 1980?

A. January, February.

Q. An active service unit, that has how many people?

A. Well, it varies from six to ten men.

Q. The three other volunteers who you mentioned in your testimony, Dingus McGee, Fats Campbell and Angelo Fusco, they and you were in the same active service unit on May 2 of 1980?

A. On May 2 of 1980, yes, we were in the same active service unit.

Q. Is that the unit that you were assigned to when you completed your training outside Belfast, your officer's training?

A. Yes, of course.

Q. Between the time when you were assigned to the unit and May 2, 1980, what other activities on behalf of the Provisional Irish Republican Army did you participate in?

A. I participated in a lot of activities. It [783] included intelligence gathering.

Q. What did you say?

THE COURT: Intelligence gathering.

MR. BLOCK: Thank you, your Honor.

A. You will have to excuse the accent.

Intelligence gathering, going with the active service commander. He was breaking me in. As I said, he would show me the routine, because as I explained before, I had been in prison five years and nine months, so I was sort of, as you could say, out of the scene a bit. I had to reacclimatized to the change of the war, which was far more faster. So I was doing sort of what you call nitty gritty work.

Q. Did you engage in any action situations prior to the second of May 1982?

A. No.

Q. When did you first receive your instructions about the activities scheduled for the second of May?

A. I received I would say 48 hours after the actual operation.

Q. What were you told and how were you told it at that time?

A. Well, I was told that there was an operation coming off in two days and that I was appointed to be on it.

THE COURT: Were you told orally or in writing?

[784] THE WITNESS: I was told orally at a meeting because we try and cut down as much on communications by—

THE COURT: Written?

THE WITNESS: Written, as much as possible, unless it's in the prison, because we don't really talk across. It is usually by communications.

Q. Did you know at that time, two days before, who you were going to be assigned to this task with?

A. No. Not really. I just knew that Volunteer Campbell was to be the operations officer.

Q. When did the essential parts of this plan become revealed to you?

A. As I said, 48 hours before I was told I was going on an operation. They told me whereabouts it was. It was in the North Belfast area. He explained to me the extent of what the operation would be.

Q. What were you told? What I am asking is exactly what you had been told as best you remember it, Mr. Doherty.

A. I am just about to tell you that I was told it was going to be an operation involving attacking on British armed troops and I was told—of course I would be asking questions, what do you mean patrols, where they come from.

He explained there will be army activity on the Antrim Road on this specific day. At one specific meeting there was an intelligence officer and he explained the [785] target area. Of course, I had a lot of knowledge where really it was because it is situated in North Belfast.

Q. You were familiar with the area?

A. Yes, as a kid, when I was young.

Q. When did you learn who the ther people on this mission were going to be?

A. The night before.

Q. The night before.

Again, at a meeting where you saw people face-to-face?

A. Yeah, you could say that.

Q. Did you learn some more about the proposed operation the night before?

A. Yes. We were told that there was a house on the Antrim Road; that most of that block, I think, was apartment buildings and we shall be taken over one of the houses and use it as a house.

Q. Did you know which house you were going to takeover?

A. No.

Q. Did you know if the house was occupied?

A. As I explained, that was an apartment building and apparently one of the intelligence officers says that there are people living in the building, but as far as we know, the third floor is vacant or the second floor is [786] vacant, whatever.

So I took it as far as what he says that it was a vacant apartment building except for one person, I think, as that was living there on the first, second, third floor. It wasn't fully occupied as far as we knew.

Q. Are you saying there was no discussion about the necessity of taking hostages?

A. No. The general policy of the Irish Republican Army, we never take hostages. This is a general order. The IRA has never been in a position to do that.

Q. Was there any discussion the night before about why this particular row of houses on the Antrim Road had been selected, apart from the fact that it was unoccupied?

A. Well, of course, the target area itself where the shooting occurred, there were traffic lights. If you are looking out the window of the house where the gun battle had taken place, there is traffic lights on the left-hand side and apparently here they drew up the intelligence on it that this was the best place. Of course, everybody knows where you have traffic lights, you have a better chance of slowing down or stopping at these traffic lights.

Q. Was there some discussions about how the attack was going to be made from this house, what kind of weaponry was going to be used?

[787] A. Yes.

Q. [What was] discussed on that subject?

A. I was told the night before that an M-60 machine gun will be on the scene, a Belgian Air Fan and also a Hackland & Clark rifle. It's an American rifle, I think, American-German.

Q. That's three weapons you are talking about?

A. Three weapons, yes.

Q. How many people did you understand were supposed to be on this mission?

A. The night before? Four.

THE COURT: So one person was not to have a weapon?

THE WITNESS: Yes. One person was the driver, which was Paul McGee, who was situated down the stairs. Paul McGee—there was another weapon on the thing, but there was no magazine in it. It was just a weapon. I think it was a Japanese pistol. I am not too sure. I forget the name of it.

Q. An Astra, does that sound right?

A. Yes. Well, I thought it was—I think the Astra looks like a Japanees pistol. This was handed over by a Marine who was fighting against the Japs or something and he handed it over to the IRA later on. It is a Japanese officer's pistol which he took off a Japanese [788] officer.

Q. You of course knew what an M-60 machine gun was, didn't you?

A. Of course, yes. It's an American machine gun. It's the standard weapon of the American military forces for some 20 years.

Q. You knew something about the history of the use of that weapon in Northern Ireland prior to the second of May 1980, didn't you?

A. Of course. It was on the news that the Irish Republican Army had received M-60s since the beginning of 1979 or the end of 1978; they are weapons of the American M-60 that were in the country.

Q. But you knew, did you not, that that particular kind of weapon had been used on several occasions earlier in 1980 and during 1979 to shoot out and to murder members of the security forces?

A. Yes, I heard that the weapon had been used on IRA operations.

Q. And on a solicitor?

A. On a solicitor? I am afraid I am a bit lost on that.

Q. A gentleman by the name of Donaldson.

A. Donaldson? I know the solicitor was killed about that time.

[789] Q. You don't know about Mr. Donaldson being a solicitor, do you?

A. A solicitor? Yes. This was an incident where there was an attack on a military installation. I think the person was coming out of the military or police installation when shots were fired and this person was killed.

The IRA issued a statement. I can only go on the statement that the IRA had issued. The IRA issued a statement saying that they regretted the death of this person; that the intended target was the military post or whatever it was. I think it was in the west of Belfast that this incident occurred.

Q. When you had this meeting the night before—

A. Excuse me, you were say the M-60?

Q. It wasn't the M-60, it was a different one of the weapons?

A. No, you told met it was the M-60.

Q. I was just asking.

A. I am just saying that I don't think it is.

Q. Which weapon do you think it was?

A. I am not too sure, but I know it wasn't an M-60 because I think it was—I think going back then it was used from a car or something.

Q. When you had this meeting the night before, Mr. [790] Doherty, was there some discussion about how to

eliminate risk to civilians on the street if you were to shoot at this British Army convoy when it was stopped at the traffic light from one of those buildings on Antrim Road?

A. Of course I was.

Q. What was discussed on that subject?

A. It was discussed that—what is normal, that civilians are not the target and we were to make sure that the military vehicle was quite severed from any civilian vehicle that was about, because usually in Belfast there is a military vehicle, civilian cars usually—if the vehicle is in front, they stay well back, and if there is a vehicle behind you, you push on.

I think it's not just the civilians think this, the army themselves so they can get away quick. They don't want to be caught in a traffic jam. So if there is a car in front or a car behind, the troops that are sitting in the back of the tank tell the car to go back in case they have to get maneuvered, in case they come under rocket attack they want to get out quick.

So usually when military convoys come down, they are usually on their own. Of course, this still brings risks to civilians, but we were told on this particular occasion, like all occasions, watch for your target. Aim at your target and watch for the surrounding vicinity of [791] the target.

Q. Was anything discussed the night before on the subject of a police station being built, almost completed down the road from where this house was on Antrim Road?

A. Well, there is a police station being built up the road, I think, on the right-hand side going north. There is a place built, but it's only the concrete foundation.

Q. So that was not the target?

A. I doubt it. I don't think so, no. No.

Well, of course, but I am trying to see what you are thinking. The actual police station, I think it's finished now. It's a 12-story police station far to the right. Let's

say about maybe 50, 60 yards. Of course, there is Belden's in front of it and the police station is in the center. It's pretty hard to explain unless I had a map here.

Q. On the morning of May 2, what time was it, approximately, when you rendezvoused with your comrades?

A. My God, it must have been 8, 9 o'clock in the morning.

Q. You rendezvoused in someplace, I assume?

A. Yes, I did.

Q. How did you get from that place to the Antrim road address?

[792] A. In cars.

Q. More than one?

A. Yes, there was one car and also there was a van used for the actual operation.

Q. When you say used for the operation, what do you mean?

A. It was the van we used to get away.

Q. It was to be the escape vehicle?

A. Yes. You could say that, yes.

Q. Where did that van come from?

A. Well, I found out at the trial that it came from the New Lodge Road area, which is 100 or 200 yards from the target area.

Q. You didn't know that prior to sitting in the courtroom during your trial that that's how the van had been obtained?

A. No, I knew long before that.

Q. It was highjacked, was it not?

A. I found out later that it was highjacked. A van had been supplied to the active service unit.

Q. The gentleman from whom the van was highjacked was held hostage the better part of the day, isn't that so?

A. As I said, the van was supplied to us. We didn't ask where it came from. As I said, it is a secret army.

It's very tight knit. You don't go where did you [793] get this or whose house did you stay at?

I was told the officer in command said we have got a van supplied to us and the van was at the back of the building of the target area.

Q. As you sit on the witness stand here now, you don't know whether or not the statement I made is accurate?

A. The van was highjacked?

Q. That it was highjacked and the gentleman who was driving it before it was highjacked was held hostage for the better part of a a day.

A. Yes. Of course. Of course he was held there.

Q. How did the weapons get to Antrim Road?

A. The weapons were supplied by a quartermaster.

Q. You don't know how they got to the Antrim Road?

A. When I got to the Antrim Road the weapons were there.

Q. Who were they with?

A. They were with the quartermaster.

Q. The quartermaster was not yourself or one of the other three people you mentioned?

A. No, we are active service volunteers.

Q. So you are saying the members of the active service unit met up with the quartermaster who was there to deliver the weapons?

A. He came in a vehicle and supplied the weapons.

[794] Q. After the quartermaster supplied the weapons, what did you, Mr. Doherty, do?

A. Well, as soon as the quartermaster supplied the weapons, the officer in command said we are going to take the house. Two volunteers. I am not too sure whether it was Volunteer Campbell or Volunteer Fusco or Volunteer McGee—I was separate and most of them went to the house. They went to the house and a lady came to the door.

Q. You didn't go, is that what you are saying?

A. Myself? The first one? No, I didn't go. If I did go I would say it because we all take responsibility for taking the house.

Q. Two of them went to the door of number 371?

A. Yes. Correct.

Q. Expecting to find no one there?

A. No, as I said, we knew through intelligence reports that some part of the building was occupied. Well, if we knew that no one was there, it would be pretty silly to knock on the door. The volunteers knocked on the door, as I explained, a lady came to the door. One of the volunteers, I am not too sure, said to her "IRA. We are taking the house over."

Q. What time was that about?

A. My God, it would be maybe 10 o'clock in the morning, maybe 10:30.

[795] Q. Then you went along with the other person that remained behind into the apartment?

A. Yes.

When I got in to the house the person or persons, or the family as I got to know them, were downstairs in the bottom apartment. They were in the bottom apartment. They were put into the bottom apartment and I proceeded to go up the stairs.

Q. How many people were there in that family?

A. My God, I don't know. I think it was three. I think there was a woman, one of her children and her sister and her husband.

Q. They were not all there initially?

A. No.

Q. These people came and were taken hostage?

A. I didn't know as I was up the stairs, but I heard the door being opened and someone coming in. Of course, we knew essentially afterwards that her husband had arrived and her sister had arrived.

Q. What were you doing upstairs?

A. I was upstairs. We were told to go up the stairs to secure the building. We checked the second floor. I think one of the other volunteers went to check the third floor. I checked the bedrooms on the second floor and we proceeded to assemble the weapons.

[796] Q. How long did that take?

A. 30, 40 minutes maybe.

Q. So by what time of day were you ready to attack the convoy if a convoy should come into sight?

A. Well, as soon as the weapons were assembled and we got the briefing. As before every operation, the officer in command would sit there and brief us again that we are going to hit this certain target coming down. Watch where you aim. Keep at least five rounds in the magazine, because I got one and we hadn't got any spare magazines. Watch what you are firing at. Take aim at the target. Don't over access the fire power. In other words, don't go crazy with the gun. This is a normal procedure we go through on all operations.

Q. What did you mean keep at least five rounds in the magazine?

A. This is in case we had to get out. Well, after the operation, if we all went down to the van with no bullets in the gun, then we would be in jeopardy.

Q. The expectation was if you fired on a British convoy, it would not take very long for the British Army to trace the source for the firing point and to come and try to capture you, is that right?

A. Well, it's what you call the trap. Once we get into the van, trying to get away, in case we come up [797] against a roadblock, we can maybe shoot our way out or give what we call cover fire. It's firing a number of rounds to keep the British Army down while we can get away in the car or by foot.

Q. What time was it, if you remember that morning, Mr. Doherty, when everything was in place and all that

was missing was a nice slow moving stopping for the light British convoy?

A. This would be in about maybe 11:30 or 12, when initially everything was got under way.

Q. You just sat there for two hours or so waiting for a convoy to come by?

A. Yes.

Q. Nothing came by?

A. Very, very—well, there was I think at one point a police car at another point, what looked like a communications vehicle. This is only a one-man patrol Jeep, you know, with the radios and stuff and supplies. I think that went by, but I was sitting in the room and it was one of the other volunteers. We took turns, maybe one-half hour to watch at the window, to watch for army vehicles coming down. Sight burners we call them.

Q. What is the first thing that you yourself personally observed or heard prior to the shoot out?

A. The shooting? Well, I was sitting there and the [798] next thing you know one of the volunteers says "There is something strange here. There is a car coming."

Q. You were sitting where?

A. I was sitting down in the room on one of the chairs. I was sitting with the weapon on my knee, like in this position.

Q. Which weapon did you have?

A. I am afraid I can't answer that.

MS. PIKE: Your Honor, I am going to object to that. I don't think it's relevant. Mr. Doherty has been convicted.

THE COURT: You went into the incident. You can't say that I am going to limit what questions he asks about the incident you went into. Overruled.

Q. You have to answer the question, Mr. Doherty.

A. I had the Hackler & Clarke.

Q. Please continue telling us what occurred.

A. As I say, I was sitting with the rifle on my knee when all of a sudden the car pulled up, I ran to-

wards the window, which was on the right-hand side of the room.

Q. This window faces out on to what?

A. Faces out on to the Antrim Road.

Q. Who is the volunteer who told you something seemed strange?

A. I think it was Volunteer Fusco. We were all [799] sort of—I am not talking about he was 10 or 12 yards away, we were all sitting near enough beside the window. He said something is up and I ran into the other room.

Q. I'm sorry, when you say all, you mean you, Fusco, Campbell?

A. Campbell, yes.

Q. McGee was where?

A. McGee was down the stairs.

Q. With the members of the family?

A. Yes. He was keeping them out of harms way.

Q. Making sure that they didn't escape and call the authorities?

A. No. It was to make sure that they were kept out of the road and making sure that they didn't wander onto the street or up the stairs. He just told them to sit down on the table, make a cup of tea or whatever you are going to do, and McGee just walked about the bottom of the stairs.

Q. Fusco's words, as you recall them, were something is strange?

A. Yes. He says there is something strange here. So I ran to the window in the other room and this is when—

Q. Which room were you in with Fusco?

A. It's the right-hand side room. I think it's the kitchen they called it. The kitchen room. I think there was a sink or something in the room.

[800] Q. There was an ironing board there?

A. Yes. Yes, that's the room. You have the photographs.

Q. You went into another room?

A. Yes.

Q. Which room did you go into?

A. I went into the room on the right-hand side going up the stairs coming from the stairs.

Q. You went to the window. Where did you look and what did you see?

A. I looked out and I seen the car. I think it was a Cortina, a blue Cortina or a dark Cortina. I am talking—bringing back to now, or then, it seemed to be a blue Cortina car. I think it was a Ford. I noticed that the numbers of these people were on their way out of the car.

Q. Where was the car?

A. The car was—let's see, just sitting in the window. The car was to my left in this vicinity, to my left. Not extremely to my left, just about at 11 o'clock.

Q. Mr. Doherty, let me show you what have been marked as Government's Exhibits 5 and 6 for identification.

MS. PIKE: Your Honor, might I see these before they are shown to the witness? I have not seen these before.

THE COURT: Let the witness see them first.

[801] A. Yes, These are photographs of the house in question from the outside of the building.

Q. Taken from the other side of Antrim Road than where the house was where you were?

A. Yes. One is taken from the wall and the other one is taken from the traffic lights, I think. Of course, as you can see, Mr. Block, the cars are missing—the car in question is missing.

THE COURT: That's a fair representation of the house itself?

THE WITNESS: Oh, it's a photograph taken from across the street and you can see the other photograph was taken from the right-hand side or the left-hand side looking at the house.

Q. Mr. Doherty, did I gather that in response to the Judge's question you said that both 5 and 6 for identification seemed to you to be fair and accurate representations of the exterior scene at Antrim Road where the shoot out occurred on the day in question?

A. Yes. Well, I know this is a photograph. The other one must have been taken way up the road.

THE COURT: The only question is is it an accurate representation.

THE WITNESS: It is from the left-hand side of the house.

[802] MR. BLOCK: Your Honor, I offer these in evidence.

THE COURT: Any objection?

MS. PIKE: No.

THE COURT: Received.

(Government's Exhibits 5 and 6 for identification were received in evidence)

Q. Do you have your pen with you, Mr. Doherty?

A. You have a pen in your hand.

Q. I don't think this will mark this.

A. My attorney has a red pen, a felt pen.

Q. Would you mark with a circle or a square, whatever, the window that you were looking out when you saw the car for the first time?

A. The window which I was looking out?

Q. Yes.

A. In a circle?

THE COURT: Mark it with a D.

A. A D.

A. To the best of my knowledge, this. Do you want me to mark the other one?

Q. On the second floor, right?

THE WITNESS: See, back in Ireland, your Honor, we call the first floor the second floor.

THE COURT: I know. You do the same thing in [803] England too.

THE WITNESS: Most of the jargon that we use—

THE COURT: It is one of the few things that the Irish and the English may agree on.

Q. Mr. Doherty, where was the automobile that you saw when you looked out the window?

A. When I looked out the window it was—

Q. This Cortina.

A. It was just to the left. I would say around this direction here, as far as my recollection is, because when I came out of the house—because when the gun battle had actually started and the SAS were firing back, of course I was keeping my head down and I was trying to get up the stairs, but the last time I looked out the window—when I came out of the building, I think the car was on its way to be moved or was moved, but I didn't actually see the car, so it was only for the split second when I was looking out of the window and the actual gun battle was taking place when I seen the car and I identified it as in a dark color. Of course, in a split second I thought it was a Cortina Ford.

Q. Could you write the word "car" at the spot at the curb where you think you saw the car?

A. Maybe in this direction. I'd say it would have been near enough to that position.

[804] Q. Why don't you draw a line between those two points.

A. Okay.

THE COURT: Who fired the first shots, do you recall?

THE WITNESS: Pardon me.

THE COURT: Did it come from your side or their side or what?

THE WITNESS: Well, I would say it came from the SAS, but it was a sort of an ongoing gun battle between us. You know, as soon as we looked at the car, shots were fired and we started to fire back.

Q. You saw this Cortina?

A. What I thought was a Cortina.

Q. What you thought was a Cortina. Did the automobile have some particular significance to you?

A. Particular significance? It was an unmarked car and for the fact that the men jumped out, the SAS men—

Q. Let's forget the men for a moment. I am asking you if the automobile that you saw when you looked out the window after you think it was Fusco said something looks strange, if that unmarked automobile which you thought was a blue Cortina, did that have any significance to you?

A. I can't really—

THE COURT: You mean the car itself, that it was [805] a Cortina?

MR. BLOCK: Let me rephrase the question. It's the question that's at fault.

Q. Did you make a mental connection in your mind from seeing that automobile from the kind of automobile it was without markings, where it was parked, that led you to conclude that—

A. That it was the attacking vehicle?

Q. That it was being used by security forces?

A. Yes. I think—of course, I am trying to recollect my memory. By looking out the window, I think one of the doors opened. Of course, the men were climbing out of the car and coming towards the house.

If you take the actual house itself, it has what is known as a garden—well, a garden here, a garden which had a hedge, so from the actual house to the street is, I don't know, 14 yards—18 feet or something, so when I looked out and seen the troops jumping out of the car, I noticed one with the machine gun and, of course, I noticed one with a sledge hammer and I noticed the orange arm band, all, of course, in a very split second or two or three seconds.

Q. You saw five people getting out of the car?

A. Yes.

Q. How many arm bands did you see?

[806] A. How many arm bands? Well, I didn't watch for everyone, that he has got an arm band, he has got one, he has got one. I noticed arm bands were on their arms.

Q. On three of the individuals getting out of the car?

A. Well, I seen at least maybe two, two or three, yes. Of course, you have got to take it, Mr. Block, this is in a maybe four or five second period. I didn't take a photograph of it, but to the best of my recollection they were wearing arm bands.

Of course, when you see one person with an arm band and he is in a certain society or whatever it is, you take it for granted that that [*sic*] the other persons had it.

Q. You made an assumption that if there was one arm band all the people in that car belonged together and they could each be wearing arm bands, is that what you are saying?

A. They all came out of the car together.

Q. Well—

A. Of course, they were going that fast, you know. Some of these guys, if you take the SAS, this is the cream of the British Army. They don't exactly walk out of the car. They are very fast, but I did notice that at least three or more had the identification.

Q. You said on direct examination that as soon as [807] they got out of the car they started to attack the house, is that right?

A. Yes. They started to come towards the house. Towards our vicinity, if you understand what I mean.

Q. You are saying that this crack undercover el[i]te British Army unit pulled up in their car right underneath your window so you could shoot at them?

A. Well, they—

Q. That's how they approached the scene by stealth?

A. Yes, they must have underestimated the Irish Republican Army. Again, the SAS is mostly used in covert operations, as I explained before, sitting on the

outside of IRA dumps, they wait on the IRA approaching the dump to pick out his weapon and they assassinate him.

Of course, when they got their information that morning about the house, they must have underestimated the fire power. I am not too sure. You will probably have to ask the SAS.

Q. Mr. Doherty, the judge asked you who fired the first shot.

A. I am afraid I don't know.

Q. You don't know, do you?

A. No. The shooting just started and I fired myself.

Q. What did you fire at?

[808] A. I fired at the—when I saw of the SAS men and the car.

Q. You shot at the men, not the car, is that right?

A. I shot at the men and the car. The car and the men came together. They were in the same vicinity. They were in the target area.

Q. Your purpose in shooting at them was what?

A. To inflict as much casualties as possible.

Q. And to prevent yourself and your other volunteers with you from being captured?

A. Well, of course, this was the SAS. They weren't exactly coming in to give us a subpoena. They were coming in on a kill mission.

THE COURT: They were coming in on a what?

THE WITNESS: On a kill mission, your Honor. See, the tactics of the SAS, this goes back to the Second World War. They were formed in the Second World War to fight against General Rommel. It's a behind the lines forces. It's the cream of the cream of the British Army. They go behind the lines, destroy railroads, oil refineries.

THE COURT: Like commandoes?

THE WITNESS: Yes, but they are more extreme than commandoes. I think to the American forces they would be maybe the Seals or Green Berets. The Seals

are the Navy el[i]te troops of the Navy, things like that.

[809] They go behind lines. They don't exactly take prisoners. As I say, they paratroop behind lines, and following after the war, the Colonial Wars in Palestine, Malaya, Kenya, Cyprus and such, they were used as counterinsurgency troops. Especially in Malaya. They were used as jungle troops, like the Green Berets.

And the urban wars, if you take like Cyprus, they were used more as assassination teams and whatnot. They are what we call the dirty tricks department of the British Armed Forces.

Q. That day, as soon as you saw a couple of people getting out, a couple of men getting out of the car and a couple of arm bands, you came to the instant conclusion that this was the SAS coming to kill you and your comrades, is that right?

A. Well, we came to the conclusion that they were SAS or MRF, which is the military reaction forces. This is another branch that's connected to the SAS. They are surveillance, but they take more covert action.

You also have—

Q. Mr. Doherty, you are not answering my questions.

A. I am sorry.

THE COURT: The answer, I take it, is yes to the question?

THE WITNESS: Yes. We thought they were SAS, [810] but we weren't sure because they weren't exactly carrying an SAS badge.

Q. Consequently you made the assumption that if it was the SAS they weren't coming there to capture you, they were coming the [*sic*] there to assassinate, to kill you?

A. Yes. We are soldiers and soldiers in a combat situation can react maybe far different than a civilian.

Q. This was your first active engagement since you had been released from prison the preceding several months?

A. Yes.

Q. You are not even sure that it was they who fired the first shot. You weren't going to wait for the first shot to be fired, isn't that so?

A. As I explained before, the actual getting out of car, the approach to the house, the type of machine guns they had, coming towards the house, of course we knew we were under attack, but I am talking about on a split second decision, when they were getting out of the car, they met us at the window and they gave a short bursts from one of their small caliber machine guns and we returned fire—I returned fire along with—

Q. Did that happen?

A. Pardon me?

Q. Did the men getting out of the car open fire first before you fired?

[811] A. Yes. Well, it took them maybe two or three seconds to get out of the car. They came towards the house, and coming towards the house all commandoes or elite troops, when they got there, as they were coming towards the house they set up a burst.

Well, this is another tactic of the SAS. It's what's called cover by fire. It's when you fire, of course the person is going to put his head down so you can move into your cover area. They shot a burst as they were getting out of the car, and as soon as they were getting out of the car we were up straightaway and fired within a second if not less.

THE COURT: Were they able to get to the house?

THE WITNESS: Yes, they did. One of the officers who didn't exactly get to the wall or behind the hedge was the captain, Westmacott. The other troops got to the wall, but we didn't know at the time until the court that they actually went to the wrong house. They went to the house next door. Then they knew where the fire was coming from, so the time we got down the stairs they were coming in the front door. This is when we heard the door being banged open. We stood back and fired through the door. They all got to the wall.

Q. Are you saying that you didn't see Captain Westmacott fall?

[812] A. I seen them all fall. They were all crouching and running, and of course when the shots are fired at you, you go for the nearest cover you can get, you are going to dive behind a car, into a hedge, into the river, wherever, so when the shooting started they were all running and darting, but I seemed to see one of the soldiers, I think it was on the left-hand side, was lying, but we were too caught up into the rest of the SAS also trying to get out.

Q. Mr. Doherty, how did you know that the five men were not other members of the Irish Republican Army, another active service unit?

A. Because we are in the active service unit and we come under the Belfast Brigade Command. The Belfast Brigade Command knew one unit was in a certain area, they wouldn't get another unit to attack this unit. It would be very counterproductive. We have a coordination within the movement.

Q. How did you know it was not some paramilitary gentleman from the Irish National Liberation Army?

A. Because the Irish National Liberation Army don't attack in this way.

Q. How do you know it wasn't some loyalist paramilitarist?

A. Because the loyalist paramilitaritsts don't attack in this fashion.

[813] Q. There always has to be a first time, doesn't there, Mr. Doherty?

A. There could be, but you have got to take on my experience at that specific moment. Five men jumping out of a car in civilian dress—

THE COURT: I take it [*sic*] is fair to say you don't know for sure who they were.

THE WITNESS: If somebody says your last 10,000 pounds, put it down on the bed, of course I wouldn't do it, but I am saying it could have been the MRF, which is

the British Army is broken up into all these small sections and, of course, if you take the SAS in general, most of the SAS—they are drawn from the regiments which I explained before, the Royal Grenadiers, the Scotch Guards, Wel[s]h Regiment and the cream of the cream of these regiments, they are taken out and put in the SAS, but when their actual job is over they go back into regiment, because when I cross-examined the SAS at my trial, I asked one, and he said yes, I am a member of the SAS, but I am attached to the Royal Wel[s]h regiment.

So, of course, it was an SAS tactic or a military tactic, the formation that they were coming at the house. It wasn't an IRA tactic or the INLA or the loyalist paramilitary group.

Q. Mr. Doherty, before you opened fire, did you [814] consult your colleagues about what their thoughts were on this matter or did you just act independently and individually?

A. Of course you act independently. I haven't the time to turn around to Volunteer Campbell and say permission to shoot. Of course, we are soldiers.

Of course, Mr. Block, if you were in the armed services yourself, the armed services are told to use their own discretion on an immediate crisis which is about to appear. You don't keep asking your subordinates "Can I pop me rifle over me shoulder or can I do something else."

THE COURT: I take it there wasn't time for a committee meeting.

THE WITNESS: No, no. Definitely not.

Q. You and your two colleagues, Campbell and Fusco, surrendered, correct?

A. Yes. We surrendered to the forces that surrounded the house.

Q. Before you surrendered, one of the three of you put up something in the nature of a white flag in the window?

A. Oh, yes.

Q. The purpose of doing that was what?

A. It was to show to the population, I think the members of the press, that we were surrendering.

[815] Q. You have already said more than once that you view it as your responsibility as a soldier in the Irish Republican Army to try to inflict the maximum number of casualties on the British forces, correct?

A. Yes.

Q. When you surrendered you hadn't yet run out of ammunition, had you?

A. Yes, you are right. We hadn't run out of ammunition.

Q. You had run out of ammunition?

A. No, we hadn't.

Q. You stopped shooting before the last round was expended?

A. Yes.

Q. Why did you not keep on shooting and try to take out as many of the members of the security force as possible?

A. Because the situation didn't allow for it.

Q. What do you mean by that, Mr. Doherty?

A. Well, as soon as the shooting stopped, as I said, we went down the stairs, we came back up the stairs, we tried to get out to the back window. We noticed that there was British troops at the back as well.

So the officer in charge assigned us to specific parts of the building waiting on the pending attack. We [816] waited and waited and the SAS didn't seem to want to come back in again, so we heard the sound of the tanks and Jeeps and the whole place was surrounded, so we took up stands—as a matter of fact, we were sitting waiting on grenades, the grenade guns with tear gas getting shot.

So the police came on the scene. The police asked to get in contact with the Irish Republican Army on the inside. The officer in command said okay, we will surrender.

But as far as what I am trying to say, why didn't we make a big shoot out, the situation was to surrender, because we see it that we are more—we are just as valuable on the inside of prison as I explained before.

Q. You were concerned that you would be killed?

A. Of course, too, yes.

Q. There was more of them than there were of you?

A. Well, there was more of them at the start of the gun battle as there was eight SAS officers knowing to the court and there was three of us. So we were outnumbered from the start.

We never surrendered until I think about an hour after the actual shooting, an hour or maybe one hour and ten minutes, I am not too sure, but it was pretty long.

Q. Isn't it correct that you and your colleagues [817] wanted to surrender to the police and not to the army?

A. No. It was actually the police who was on the bullhorn. It was on the horn that called in.

Q. Hadn't somebody from inside 371 Antrim Road asked for the police to be brought?

A. The police? No. A priest.

Q. Someone asked for a priest to be brought?

A. A priest and police sound alike. This is what I tried to explain to them. The police thought we were calling for the police and they asked us for surrender and we called out saying we are not surrendering until a priest arrives on the scene. This is to be a witness in case there was an assassination on the way out.

In case they turned around and said well, Mr. Doherty, Mr. Fusco and Mr. Campbell had guns in their pockets and were trying to get out, so as well as a surrender, the officer in command, Campbell, told us to put the guns on the outside of the window, so the guns was on the outside of the window so the press can see and the actual population.

We asked for a priest, but I think one of the soldiers or whoever was below was a Scotsman. This is a person from Scotland. Of course, the way they say priest is

priest, very quick in that, so we said a priest, get a priest, but the police was already on the scene. As a [818] matter of fact, the police was already calling on the bullhorn.

Q. In any event, the three of you surrendered?

A. Oh, yes.

Q. At some point you said you left the weapons up on the window ledge?

A. Yes.

Q. That was to show you didn't have any weapons when you were coming down?

A. Yes. This was to show we hadn't got any weapons. If we had been assassinated on the way down, if we had left the weapons inside the rooms and we had been assassinated, they could have put the weapons beside us and say they tried to make a shoot out, so by the weapons on the outside of the window, the actual flag to show the people we are actually surrendering, and this is why we asked for the police, just in case we were on the way down the stairs and we would get assassinated, this was it.

Q. When you came out of the building you saw the body of a soldier there, correct?

A. Yes. He was much to the left-hand side.

Q. What kind of clothes was he wearing?

A. Clothes I didn't notice.

Q. You didn't notice?

A. No. I think there was a blanket over him.

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[REDIRECT EXAMINATION]

[850] BY MS. PIKE:

Q. Mr. Doherty, we had quite a few questions from Mr. Block about your juvenile adjudication when you were 12 years old. Would you tell us, please, what the disposition of that matter was?

A. Excuse me?

THE COURT: What was the outcome of your prosecution as a juvenile?

MS. PIKE: Thank you, your Honor.

THE WITNESS: I spent four weeks in a training school.

THE COURT: St. Patrick's School?

THE WITNESS: Yes. It is a sort of farm. It is situated in the west of Belfast. I spent four weeks there with the priests and nuns who run the place.

Q. Mr. Doherty, just to place you back to 371 Antrim Road, what if any contact did you have with the people who were being held in the apartment on the first floor after the shoot out occurred but before you left the house?

A. We had no contact at all.

Q. Thank you. If you would, you stated that the IRA policy is against taking what Mr. Block referred to as hostages. What is the basis for the IRA policy against taking hostages?

[851] A. We did not take hostages because civilians are not part of the war, plus we see ourselves as an army, and as explained in Document 37, the IRA has a military code of ethics. Of course, this contradicts the general British media that tries to say that we are terrorist thugs, Leninists, murderers. This is just a screen to the outside world so people won't fully understand what's going on in the north of Ireland.

People in the United States, if they went to Belfast and understood the situation, seeing the strife that was there and came back to the United States and tried to maybe do something about it through their congressmen or senators, would fully understand.

But the IRA, we recognize ourselves as an army. We recognize ourselves that we have some moral justification in the war. We have moral justification in the war.

Q. Finally, Mr. Doherty, I have one final question. What was your purpose in escaping from the Crumlin Road Jail on June 10, 1981?

A. The purpose of the escape, of course, we were prisoners of war, we escaped from prison. The sense of

the escape is to spread as many British troops as possible, tie them down on the ground. As a matter of fact, after our specific escape, I don't know, it was on the British news [852] and the Irish news that hundreds of troops had been drafted into the north, east, south and west of Belfast to search.

Also for publicity sake. It was to publicize to the rest of the world and to the rest of Ireland that prisoners were fighting back and the struggle was there and we were fighting back.

Also for the morale of the prisoners on the inside and the morale of the hunger strikers. As one of the hunger strikers who died three or four weeks later, a man called Joe McDonald—we got a letter from his wife thanking us for the escape and she says before Joe died he said he was going to his death happy that he knew men had fought back and had broke the British system.

MS. PIKE: Thank you, Mr. Doherty.

THE COURT: Anything further?

MR. BLOCK: No, your Honor.

THE COURT: You may step down, Mr. Doherty.

THE WITNESS: Thanks very much, your Honor.

(Witness excused)

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SUPREME COURT OF THE UNITED STATES

No. 90-925

IMMIGRATION and NATURALIZATION SERVICE, PETITIONER

v.

JOSEPH PATRICK DOHERTY

ORDER GRANTING CERTIORARI

Filed February 19, 1991

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

February 19, 1991

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